

IN THE HIGH COURT OF SWAZILAND

In the matter of: Criminal Case No. S.74/83

THE QUEEN

VS

NOBUHLE T. SHIBA

CORAM: NATHAN C.J.

FOR CROWN: MR. NSIBANDE

FOR DEFENCE: IN PERSON

JUDGMENT

(Delivered on 10th June, 1983)

NATHAN C.J.

The Accused in this case is charged with attempting to defeat or obstruct the course of justice.

It is alleged in the indictment that one Queen Nozipho Mlangeni was, to the knowledge of the Accused, a witness in the trial for murder of one Sikhondze and others, and that the Accused, with intent to defeat or obstruct the course of justice threatened Nozipho with death for giving evidence against the Accused in the murder trial.

2

The Accused is unrepresented. The Crown has closed its case; but it is necessary for me to consider, along the lines discussed in *Mtetwa v R*, 1970-76 SLR 364 and in *M. Mncube and Another v R*, Appeal Case No. 13/1982, 5th January, 1983, whether the Crown has made out a sufficient case to require the Accused to make a defence.

The evidence of the the complainant Nozipho and her grandmother Alinah Dlamini broadly followed the lines of the indictment. It emerged that Nozipho was a Crown Witness in the murder trial; and she had not finished giving evidence when the incident in question took place. The Accused was going to be a witness for the defence. Nozipho and Alinah were staying at the house provided for witnesses. Before Nozipho arrived there the Accused turned up and embarked upon what appears to have been a lengthy tirade of complaint to Alinah. She continued this after the arrival of Nozipho. Nozipho and Alinah say they did not join issue with the Accused. Nozipho said in evidence that the Accused had said that those giving evidence against the Accused in the Murder trial would be charged with perjury as they were telling a lie. Farther, that the defence counsel had told her that the deceased in the murder case had not been killed but had died of natural causes and had also taken too much alcohol. She also said that one of the Crown witnesses, probably Nozipho, had mentioned her name and that that person would have to pay the Accused because as a result of her being implicated she had lost her job at Bhunya. She also said that person would die. Nozipho

3

said the Accused did not say how that person would die.

There was such a noise and commotion that a police officer came and took the Accused away. Thereafter the present charge was laid.

Nozipho was pregnant at the time and some time after this incident she gave birth prematurely. There was a faint suggestion that this premature birth was caused by the Accused's outburst; but the evidence is far too vague and uncertain to warrant any finding to this effect.

It was put to Nozipho in cross-examination that the Accused had never quarreled with Alinah or that she had any conversation with her and that she was removed by the police officer simply because she had no right to be at the witnesses's house. Nozipho, who gave her evidence very well, said that the police officer had been called by a woman named LaMasuku because of the noise that the Accused was making. The Accused also put it in cross-examination that she had not said that anybody was going to die and that she had never worked at Bhunya. Nozipho suggested that the Accused had been drunk on the day in question. The Accused also denied that the defence attorney had told her that the deceased had died of natural causes. She said the lawyer had told her she must come back later and that was why she had gone to the witnesses' house, presumably to stay there until she was required.

The evidence of Alinah, who appears to be a respectable elderly woman was very similar to that of Nozipho. She said that the Accused had arrived at the house very angry, and had sat down and said that the people responsible for her

4

losing her job would have to pay her. When Nozipho arrived the Accused told her she had come to give false evidence; that people who did this could be charged with perjury; and that the doctor had reported that the deceased had died of natural causes. She said Nozipho had been telling lies in Court.

I was not impressed with the Accused's defence as put in cross-examination. She appears to me to be an untruthful, quarrelsome and noisy woman who, however, was suffering from a sense of grievance on the day in question. For the purposes of the present enquiry, moreover, I must largely assume that the allegations of the Crown witnesses are correct. But even accepting this, the question I have to determine is whether the Accused's statement amount to an attempt to defeat or obstruct the Course of justice. In my opinion this question must be answered in the negative. The evidence for the Crown is not to the effect that the Accused was trying to persuade Nozipho to retract or modify the evidence that she had given. Although to tell a person that she is telling lies and that perjurers may be convicted and punished may conceivably affect the evidence that that person is giving, this is by no means the only consequence that will follow or legitimate inference to be drawn from those words. If an innocent interpretation can reasonably be placed upon what the Accused said, then it appears to me that the prosecution must fall. Compare *R v Blom*, 1939 A.D. 188 at p. 202.

Reference may also be made to the judgment of Hoexter J.A. in *R v Port Shepstone Investments (PTY) Limited* 1950 (4) S.A. at p. 639 in which the learned judge approved the following

5

definition in *Gardiner & Lansdown*; "An attempt to defeat the course of justice consists in the wilful intent to obstruct the due administration of justice, coupled with an act calculated to further, and done in furtherance of, that intent." See also *R v Foye & Carlin*, 1886 2 BAC 121 at p. 125, in which De Villiers C.J. spoke of "the necessary tendency to interfere with the due administration of justice." Unless one can point to a wilful intent or a necessary tendency I do not consider that an Accused has a case to meet.

As I put it to Mr. Donkoh, counsel for the Crown, in the course of argument, here we have a woman, suffering from a grievance, who has been told that the witnesses for the prosecution are not telling the truth. She believes this and takes up the matter with the witness apparently in good faith. It does not appear to me that without more she can be said to be attempting to defeat or obstruct the course of justice. Although it is not generally desirable that people should discuss with witnesses the evidence that the latter are giving during the course thereof, I do not consider that to do so necessarily amounts to an attempt to defeat or obstruct the course of justice. The approach to the witness may be prompted by

perfectly legitimate motives. For example a bystander might wish to point out that certain of the evidence that has been given is not correct; and one of the object of having trials in public is to induce listeners to come forward with what they consider to be the true evidence in the case. The fact that the listener may have an interest

6

in the case or already be a potential witness for the defence does not appear to me to affect the position. And if the bystander approaches the witness direct instead of approaching the prosecutor this also should not affect the position.

I consider that the language that the Accused used was intemperate. But I do not consider that it was calculated improperly to influence the course of Justice. It is to be noted that even in regard to the statement that the persons giving the false evidence would die, neither Nozipho nor Alinah say that they took this seriously.

In my opinion the Crown has not established a sufficient case to put the Accused upon her defence. The Accused is found Not Guilty and is discharged.

C. J. M. NATHAN

CHIEF JUSTICE