IN THE HIGH COURT OF SWAZILAND

CRIM. CASE NO.94/88

In the matter of

THE KING

vs

PHUMLANI FREDERICK CHIBI

CORAM : HANNAH, CJ.

FOR THE CROWN : MRS. FRUHWIRTH
FOR THE DEFENCE : MRS. HLANZE

JUDGMENT

(12/5/89)

Hannah, CJ.

The accused has pleaded not guilty to an indictment which alleges that on 21st March 1988 he murdered Raymond Chibi, who was his father, and to whom I shall refer in this judgment as "the deceased". At the outset of the trial Mrs. Hlanze, who appears for the accused, intimated that the defence wished to raise the issue of insanity and wished to call Dr. Lasich, a psychiatrist, who has been treating the accused and who travelled from Durban to give evidence. Accordingly the court heard his evidence following the rule that evidence on such an issue should normally be heard at the beginning of or early in the proceedings. At the conclusion of his evidence the Crown called its witnesses, the allegations in the indictment still remaining in issue. The accused elected not to give evidence.

Section 165 (1) of the Criminal Procedure and Evidence Act provides -

> "If an act either of commission or omission is charged against any person as an offence and it is given in evidence on the trial of such person for such offence that he was insane so as not to be responsible according to law for his act at the time when it was done, and if it appears to the court before which such a person is tried that he did the act but was insane as aforesaid at the time when he did it, the court shall return a special finding to the effect that the accused did the act charged, but was insane as aforesaid when he did it."

As appears from this subsection two questions arise. Has the Crown established that the accused did the act with which he is charged i.e. unlawfully killed the deceased? Secondly, has the accused established that he was insane so as not to be responsible according to law for his act at the time when it was done? The Crown must prove the first issue beyond reasonable doubt: the accused must prove the second issue on a balance of probabilities.

The evidence on the first mentioned issue was for the most part straightforward and unchalleged. In the morning of 21st March 1988 the accused's mother was alerted by a noise from the bathroom and on going there found the deceased lying on the floor with the accused standing over him hitting him

with an iron bar. She saw the accused hit the deceased - three times she thought - on the back of the head and she observed an injury to the back of the deceased's head. After the mother had intervened the accused ran off. The mother's evidence was supported by Njabulo Lukhele who came on the scene when she was struggling with the accused for possession of the iron bar and I have no doubt that the accused did attack the deceased with an iron bar and did inflict wounds on his head.

According to Lukhele the deceased was still alive after the assault but unconscious and he put him in a van in order to take him to hospital. On the way the van skidded and the deceased fell

out and the journey was completed in another vehicle. Lukhele said he saw no additional injury to the deceased following the road accident but Mrs. Hlanze correctly submits that the Court must be sure that the accident was not the cause of the death of the deceased.

In my view, the answer lies in the medical evidence. According to the doctor who carried out the autopsy on the deceased there were four distinct areas of major cut wounds on the head of the deceased. There was a deep penetrating wound about 5cms on the left temporal region, there was a deep penetrating wound about 7cms on the left hair-line extending over the hair-covered scalp, there was a laceration on the occipital region about 4cms long and a wound over the right temporal region.

There were fractures to the skull associated with these wounds and a fracture of the occipital bone. Cause of death was intracranial haemorrhage. In the opinion of the doctor these wounds were consistent with blows being applied to the head with the iron bar, exhibit one, which, I would add, is very heavy.

The doctor was cross-examined by Mrs. Hlanze as to the possibility of the fall from the van on the way to the hospital having been the cause of the death of the deceased but the doctor considered that had his head struck the ground with any degree of force there would have been evidence of this visible on the head such as an area of haematoma; but there was-none. In my judgment, the evidence of the doctor taken together with the other evidence in the case rules out any reasonable possibility that the death of the deceased was caused as a result of the road accident. I am left in no doubt that his death was caused by the assault perpetrated on him by the accused.

I turn now to the evidence of Dr. Lasich. He is a psychiatrist of considerable experience and I found his evidence compelling. He first saw the accused on 30th September 1988 and then three times

in October 1988 and again in April 1989. He provided the Court with the case history of the accused from which it emerged that the accused had been receiving treatment prior to 21st March for depression and that his behaviour prior to that time had been abnormal. For example, he had on one occasion placed a wall clock in the freezer because he found it too noisy, an incident confirmed in evidence by the accused's mother. As a result of his examination of the accused and with the assistance of an assessment by a clinical psychologist who also conducted tests on the accused Dr. Lasich was firmly of the opinion that at the time of the killing the accused suffered from paranoid schitzophrenia with a schizoid premorbid personality. In layman's terms he had a split mind and suffered from delusions and hallucinations with a predominant idea of being attacked or persecuted.

These delusions of danger became focused on his father and it was as a result of this that he attacked his father. He acted, said the doctor, in order to protect himself from what he falsely interpreted as a threat to his life by his father. In the doctor's view the mental illness suffered by the

accused rendered him incapable of appreciating, either morally or legally, the wrongfulness of his act.

In my opinion, the doctor's diagnosis finds substantial support in various circumstances surrounding the killing such as the fact that the accused enjoyed a good relationship with the deceased, as was testified to by the mother, that he killed the deceased quite openly and without any apparent provocation and had been displaying abnormal behavioural patterns during the evening preceding the killing. I find in terms of section 165 (1) that the accused has established that at the time of the killing he was insane so as not to be responsible according to law for his act at the time it was done.

In terms of section 165 (2) and (3) of the Criminal Procedure and Evidence Act where a special finding in terms of section 165 (1) is returned the Court must order, pending signification of His

Majesty's pleasure, that the accused be kept in custody as a criminal lunatic in such place and in such manner as it directs. The Court has no option in the matter even when, as in the present case, the opinion of the psychiatrist is that the accused has responded well to treatment and that confining him in a hospital would be counter-productive. All I can say is that the Court will expedite its report to the Attorney-General and urges the Attorney-General to use his best endeavours to ensure that the matter is brought to His Majesty's attention as soon as possible.

Accordingly, I make a special finding in terms of section 165 (1) of the Criminal Procedure and Evidence Act that the accused was insane so as not to be responsible according to law for the killing of the deceased and I order that he be kept in custody at the Mental Hospital, Manzini pendingsignification of His Majesty's pleasure.

N.R. HANNAH

CHIEF JUSTICE