

IN THE HIGH COURT OF SWAZILAND

Review Case No.17/93

In the matter of

THE KING

vs

GEORGE JOHN MATHUNJWA

In the district of Shiselweni

17th February, 1993

Review Order

Hull, C.J.

The accused pleaded guilty to a charge of assault with intent to cause grievous bodily harm. The nature of the charge was that after some soldiers tried to recover some marijuana from him, he took out a knife and stabbed one of them in the back. The soldier who was attacked received 6 stitches and had to spend 10 days in hospital.

The accused, who was not represented by counsel, gave evidence. He then said that he had been assaulted by the soldiers. He said that there were three of them and that one was throttling him. He was therefore raising the issue of self defence.

He had not put these allegations in cross-examination to the soldier who was stabbed. No other soldier was called as a witness.

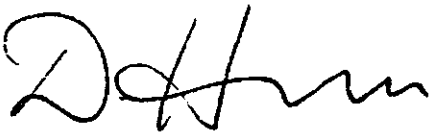
It was incumbent on the learned senior magistrate to consider the reasonable possibility of self defence. From

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his reasons for his judgment, it is clear that he rejected this defence because it had not been put to the soldier. No other reason was given for disbelieving the accused.

The fact that an accused person does not put an allegation of this kind to a witness does of course go to the issue of his own credibility. Where, however, he is not represented by counsel, one explanation may well be that he did not understand the desirability of doing so and in any event (even where he is legally represented) such an omission alone is not necessarily a conclusive indication that his account is not credible. It is one factor, and in many circumstances it may be a weighty one, but in every case the court must weigh the evidence, including the credibility of the accused person's account, overall.

In this case, it is not shown that the learned senior magistrate addressed his mind to this requirement. In these circumstances, the conviction is reversed and the sentence is set aside..

A handwritten signature in dark ink, appearing to read 'D Hull', with a stylized flourish at the end.

David Hull
CHIEF JUSTICE