

IN THE HIGH COURT OF SWAZILAND

Cr. Case No. 141/95

In the matter between:

THE KING

VS

HLOBSILE ZELDAH MABILA

CORAM: S.W. Sapire A.C.J.

FOR THE CROWN Mr. Wachira

FOR THE APPELLANT Mr. S. Masuku

Judgment

(7/5/96)

Hlobsile Zelda Mabila, you are charged with murder. It is alleged that on or about 25 April 1995 at Lusoti Village, Simunye in the district of Lubombo you did wrongfully, unlawfully and intentionally kill Lungile Dlamini.

That Lungile Dlamini was killed and that you are the person who inflicted the fatal wound is quite apparent from the evidence and is in fact not denied by you. You claim that you stabbed the deceased in a course of a fight and that in fact you had disarmed her and having disarmed her you then inflicted this wound by stabbing her in the neck.

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The evidence of the crown cannot tell us what happened in the house and one has to consider whether your version can be reasonably possibly true or whether the surrounding circumstances are such so to make your version incapable of being accepted. The key factor is the murder weapon. The knife which was used to stab the deceased is before the court. It has been proved to be the property of the first witness Khololo Robert Mavimbela and he explained to court that this was his knife and that it was in his kitchen.

You as one of the dwellers in his house and as one of the women who used the kitchen had access to that knife. There appears to be no reason why that knife should have been conveniently placed for the deceased to pick up in Elphas's house. There has been evidence that your partner had recently been found having sexual relations with the deceased and arising out of this, there was a dispute not only on this account but on the related matter of disappearance of some shoes.

There has been no evidence of any motive other than possible jealousy and anger on your part directed to this woman who it is common cause had recently been found in adultery with the person you regard as your husband. The critical question is how this knife come to be available in Elphas's house.

There has been evidence of the events immediately preceding the killing and the court was told by Robert who I have no reason to disbelieve that he actually separated you and the deceased when you

first started the argument. He told the court how he separated you and sent you back into the house and how the deceased went away. You apparently were not content over that and you left the house and you were seen again quarrelling with the deceased.

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During your stay in the house you had the opportunity to take the knife and arm yourself with it for your next encounter with the deceased. You were clearly determined to have it out with her that day and I can make no other inference such that you intended to use the knife on her when you left the house. It is quite clear that later you resumed your argument with the deceased and followed her into the house of Elphas to which she had retired. In that house and within a few minutes something happened which resulted in the death of the deceased. You say that in the course of the argument the deceased retired to the kitchen sink where she armed herself with a knife which she immediately dropped to the ground. You claim that you placed your foot on her hand when she bent down to pick it up and you yourself then possessed yourself with the knife and having disarmed the deceased in this way, you then stabbed her. She then tried to get out of the house and you and she were seen emerging both covered in blood and you with the knife in your hand.

The deceased succumbed to the wound shortly thereafter. You went back to your home where after being disarmed by Robert, you washed your hands and later heard that the deceased had died.

I have no doubt that the deceased did not attack you in the house. It was you who was in possession of the knife originally and throughout. It is you who armed yourself with the knife for the purpose of using it on the deceased. I have no doubt that you were motivated by feelings of anger, jealousy and indignation because your lover had betrayed you with her. Your fury was the motivation for your act.

Whatever your intention may have been in using the knife and from the nature of the wound I can only infer one intention and that was to kill. You used the knife, reckless as to whether death could ensue or not. There is no reasonable doubt but that you are guilty of murder and

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you are found guilty of murdering the deceased on 25 April 1995.

I find that the circumstances in the case I have outlined especially the sexual relationship of the accused's lover with the deceased and the circumstances in which he was discovered to be extenuating circumstances permitting me to pass a sentence other than death. I also note that you have no previous convictions.

You have been found guilty of murder with extenuating circumstances. I have taken into account the circumstances which have been previously outlined. I also take into account that you have no previous convictions and that you are a young person at the outset of your life. On the other hand the crime of murder is serious. It is one of the most serious crimes that a person can commit and you must be punished accordingly.

Your sentence will be five years imprisonment dating from 26 April 1995.

S .W. SAPIRE

ACTING CHIEF JUSTICE