

IN THE HIGH COURT OF SWAZILAND

CRI. TRIAL NO. 50/1996

In the matter between:

REX

VS

SHINGA SIMON KHUMALO

CORAM S.W. SAPIRE, A C J

For Crown Ms. Nderi

For Defence Mr. N.J. Hlophe

Judgment

(10/02/97)

The accused is charged with murder. It is alleged that on or about the 27th of October, 1995 and at or near Buseleni area in the Shiselweni Region he unlawfully and intentionally killed Ngwangwa Manana.

He pleaded not guilty.

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The accused and the deceased were half brothers. They ploughed together had common use of ropes which were used for spanning oxen. An argument over these ropes arising from them not being available to the Accused seems to have occasioned strong ill feelings between the two. An argument on the 26th of October 1995 resulted in a fight between them in which the deceased inflicted a painful injury on the accused. On the 27th of October 1995 a number of persons gathered near the home of an eye witness, Saraphina Nyembe. Those present included Phondo Manana and Bafana Zwane.

Neither of these two persons who it had been intended should be called as crime witness were available to give evidence at the trial. The deceased was among the people present and the company were drinking traditional beer known as umqombotsi. The accused suggests that the drink may have been something else but it is clear that the alcoholic beverage was consumed by those present.

Although Saraphina Nyembe who is the only eye witness claims to have seen all that took place on that day I am satisfied that events must have occurred which she did not see. She described that the accused arrived and joined the group who were drinking but she says that she saw the deceased stand up and walk away shortly after the accused arrived. According to her the accused followed the deceased with a knife in his possession. As the accused and the deceased reached the gate in the fence of the homestead she saw the accused stab the deceased who fell down. The accused shouted some words and stabbed the deceased again. The second blow was somewhere around the neck.

She saw the accused, so she says, kick the deceased in the face and she saw blood. She claims that she spoke to the accused and asked why he was assaulting his brother. The accused did not give a reason and left.

The accused version is somewhat different. While he admits that he did stab the deceased he claims that this was done in self-defence. It is clear that the accused was still harbouring the pain and indignity of the wound which had been inflicted on him the previous day by the deceased. It is also clear that the parties had all been drinking for sometime and the judgment and tempers of all may have been strained. But I cannot

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accept that the accused obtained the knife with which he stabbed the deceased in the manner in which he described. He says that it was hidden in the thatch of the house and he managed to get hold of it when he was being attacked by the deceased. He says that the stabbing took place when he was cornered on the fence of the house and when he was in fear of his life. It is clear however he was in possession of the knife before the deceased got up to leave.

He says that he did not intend to kill the deceased and that the stabbing took place in self-defence.

The details of the incident as described by the accused are somewhat confused and contradictory and the injury sustained by the deceased as described in the post mortem report do no accord with his version. The stab injury on the back of the chest which is injury number 2 is not explained. I am satisfied that in stabbing the deceased the accused was not acting in self defence. His assault on the deceased was probably the result of anger from the previous day and the presence of liquor accounts for the lack of judgment and excessive anger which resulted in the death of the deceased. These factors satisfy me that there was no intention to kill and that the accused is guilty of culpable homicide. He is accordingly found guilty of culpable homicide.

I have listened carefully to what your Counsel has said and I take into consideration that firstly you appear to be remorseful for what has taken place. I take into consideration that you yourself surrendered yourself to the police and made a clean breast of what took place immediately. I take into account your family situation including the fact that you have been the cause of the death of a close relative. This could make you to incur even the hate of people who were close to you. Your conduct however cannot go unpunished but I also take into account that you have been in prison awaiting trial since October, 1995. The sentence which I will impose upon you must reflect the seriousness of the killing of a fellow human being even when there is a certain amount of provocation or even when your judgment had been clouded by liquor.

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The sentence which I impose is as follows.

You will be imprisoned for a period of 5 years of which forty-two months which (three and a half years) is suspended for a period of three years on condition that you are not hereafter convicted of a crime involving the wrongful killing of, or infliction of serious bodily injury on, any person, committed during the period of the suspension. The period your imprisonment will be deemed to have commenced on the date of your arrest that is the 28th October 1995.

S.W. SAPIRE

ACTING CHIEF JUSTICE