

IN THE HIGH COURT OF SWAZILAND

Cri. Appeal No. 4/1997

In the matter between:

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| 1. Bhozongo Simelane | 1st Appellant |
| 2. Mkhize Bhembe | 2nd Appellant |
| 3. Mpikie Simelane | 3rd Appellant |

VS

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CORAM

S.W. Sapire, A C J

J.M. Matsebula, J

For Appellants Mr. Lukhele

For Respondent Mr. Waschira

Judgment

(25/2/97)

The three appellants were charged in the Subordinate Court for the District of Shiselweni held at Hlatikulu on three counts of assault with intent to do grievous bodily harm. The complainant on the first count was Aaron Dlamini and Paulos Nzima and Tamati Simelane were the victims of the assault alleged in counts 2 and 3. The accused persons were represented by an attorney and further particulars to the charges were requested. In answer to this request the crown furnished particulars which were considered sufficient by the Magistrate and from which it appeared that the crown was relying on a common purpose.

The Appellants pleaded not guilty to the charges as particularised but were found guilty at the end of a protracted trial. Mr. Douglas Lukhele who appeared for the Appellants argued in the first

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instance that the Appellants had been prejudiced by insufficient particularity regarding the common purpose upon which the crown relied. It appeared to us however that the Appellants had been sufficiently informed of the case which they had to meet and as this point has not specifically been raised in the Notice of Appeal it was not pressed by Counsel.

The trial itself commenced under somewhat threatening conditions and it is clear that all parties thought it prudent to remove the venue from Hlatikulu to Manzini. It seems that the events which gave rise to the charges had a local political element and that the supporters of the respective factions

became menacing in the demonstration of their allegiances.

As described by the Magistrate the case for the crown was that the three Complainants had gone to KaGwegwe to tell the people that there was to be no meeting held that day namely the 2nd of January 1996. Aaron Dlamini is the Induna for the area and he is a man of apparently 70 years of age. On their arrival at the appointed place a group of boys who were there surrounded them and almost immediately the three accused arrived.

Accused Number 1 told them that they should go to a meeting and he ordered the complainant to stand up. As soon as the complainant was on his feet accused Number 1 who is the first appellant then assaulted him with a sjambok striking him on the bridge of his nose and all over the body. As he tried to run away the 2nd Appellant who was accused number 2 hit him on the back of his head with a straight stick. After the incident he received treatment at the clinic at Enhletjeni. He later went to the Hlatikulu Government Hospital.

The evidence of the first complainant was supported by that of the complainant on the second charge.

Although there was no evidence that the third appellant assaulted the first complainant he joined in the assault and threw a knobstick at him. The three complainants fled from the scene as soon as they could get away.

Complainant on the second count ran towards a Shabangu homestead but fell. At this point the second Appellant assaulted him with a straight stick several times. He also identified all three appellants as having been among the people who surrounded them. His evidence is to the effect that the group first attacked the complainant on the first count and then turned their attentions to him.

Complainant on the third count also gave evidence and in broad detail confirmed what complainants on the other two counts had said. He also recounted that when they were under the tree where the meeting was to have been held a group of people who he describes as an impi surrounded them. He also said that the complainant on count one was the first to be assaulted and that the three complainants attempted to run away but were followed by the impi. He too was hit by the second appellant with a knobstick on the head. Number two, he says, struck him all over the body. He was never assaulted by first and third appellants.

The Magistrate accepted the evidence of the complainants and rejected that given by the Appellants.

This Court as a Court of Appeal will be slow to differ from the factual findings of the Court aquo. In this case there is no reason to differ from the Magistrate's findings on questions of fact.

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The thrust of Mr. Lukhele's argument was however that it had not been shown that each of the accused had taken part in the assault on each of the complainants. This was not in fact the crown case. The Crown Case was that the three Appellants associated themselves on the assault of the three complainants. This was clearly demonstrated by the evidence. It was not necessary for the crown to prove that each of the Appellants individually assaulted each of the Complainants.

The participation of each was clearly proved in that they all joined in the assault of the three men. This being so the Magistrate was correct in finding that they were all three guilty on each of the accounts.

I agree

S.W. SAPIRE

J.M. MATSEBULA

ACTING CHIEF JUSTICE JUDGE OF THE HIGH COURT