

IN THE HIGH COURT OF SWAZILAND

HELD AT MBABANE

CRIM. CASE NO. 112/98

IN THE MATTER BETWEEN:

THE KING

VS.

SIMON MASHTPHISA MNGOMETULU

CORAM:

DUNN J.

FOR THE CROWN:

MRS. M. DLAMINI

FOR THE DEFENCE:

MR. J. MAGAGULA

JUDGMENT

3rd NOVEMBER 1998

The accused pleaded not guilty to an indictment of two counts of murder and one count of attempted murder. The offences are all alleged to have been committed at Mbelebeleni area on the 28th January 1998. The deceased on count 1 was the accused's brother. The deceased on count 2 was the accused's cousin. The complainant on count 3 is the accused's aunt.

The evidence tendered by the crown is relatively simple and straightforward and not challenged by the defence. The accused is a farmer at Vuvulane in the Lubombo District. A traditional ceremony, to which the deceased on count 1 and the accused's sister, Evelinah Mngometulu (PW1) were invited, was held at the accused's farm over the weekend leading to the 28th January. The deceased on count 1 was unable to honour the invitation. On the 28th January the accused requested his sister Evelinah to accompany him to their parental homestead at Mbelebeleni where the deceased on count 1 resided. The accused travelled in his motor vehicle. On arrival at the homestead the accused enquired from his brother (deceased on count 1) as to why he had not attended the

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ceremony at his farm. The brother gave an acceptable explanation to the accused. The accused then made inquiries from his brother about a cow, which he (the accused) had requested his brother to purchase. The answer received by the accused resulted in the deceased on count 2 being called to where the accused and his brother were, in order to explain certain aspects of the transactions relating to cattle that the accused had purchased. The explanations given by the deceased on count 2 were not clear and it became necessary to proceed to the homestead of the complainant on count 3 (the mother of the deceased on count 2) for purposes of seeking further clarification from her. The complainant on count 3 confirmed what had been said by the deceased on count 2. The unchallenged evidence is that the accused believed that he had been the victim of a fraud that was perpetrated by the two deceased on counts 1 and 2 and the complainant on count 3. The discussions took place in a hut belonging to the complainant on count 3.

It is common cause that the accused became extremely angry in the course of the discussion in the hut. He left the hut and went to his motor vehicle, which was parked nearby. It was the accused's evidence that he went to the vehicle in order to calm down. He stated that he was then overcome by a strong urge to return to the hut and to demand a proper account for the cattle that he had purchased. In the course of this he states that he felt the need to protect himself in the event that the deceased persons decided to attack him in response to his demand for the cattle. He told the court that he then picked up a screw-

driver that was in the back of his vehicle and returned to the hut.

The account given by the crown witnesses of what transpired after the accused's return was that he closed the door, bade farewell to all who were in the house and proceeded to stab the deceased on counts 1 and 2 and the complainant on count 3. The accused left the hut and took a rope from his car saying he was going to hang himself.

In his evidence, the accused stated that the last thing he could remember was closing the door of the hut. He next remembers being in his motor vehicle feeling as if he "was coming out of a dream." A relative informed him that people had been killed in the hut and he asked how that had come about.

The accused was examined by the Government Psychiatrist, Dr. R. Ndlangamandla. Dr. Ndlangamandla was called as a witness by the defence. He gave evidence and filed a useful and comprehensive report of his examination and assessment of the accused for which this court is highly indebted. The accused has a history of epilepsy for which he has been undergoing treatment since 1981.

Dr. Ndlangamandla gave the opinion, following his examination of the accused, that the accused's actions were not voluntary as a result of the accused's mental status which "was so deficient and so abnormal such that he was deprived of rational intent." It was Dr. Ndlangamandla's further opinion that the accused was not responsible for his actions because "it was as a result of his mental and neurological condition" and that "at the time of committing the act he was labouring under a defect of reason from disease of the mind, as not to know the nature and quality of the act he was doing." It was Dr.

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Ndlangamandla's conclusion that the accused was insane at the relevant time. The crown does not challenge Dr. Ndlangamandla's evidence and conclusions.

Section 165 of the Criminal Procedure and Evidence Act No. 67/1938 provides in part as follows-

(1) 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 it was done, and if it appears to the court before which such 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.

(2) If a Special finding is returned the court shall report to the Attorney-General for the information of His Majesty and shall meanwhile order the accused be kept in custody as a criminal lunatic in such place and in such manner as it directs.

(3) His Majesty may order such person to be confined during His pleasure in a place of safe custody.

The defence of insanity has in my finding been established. The verdict of this court is that the accused committed the acts charged on counts 1,2 and 3 but was insane at the relevant time. Dr. Ndlangamandla informed the court that the accused's condition is treatable and can be controlled on adequate treatment, such that he does not become a danger to society and himself I direct, in the circumstances, that the accused be detained as a criminal lunatic at the Mental Hospital in Manzini for treatment, pending the order of His Majesty under section 165(3).

In terms of section 165(2) of the Criminal Procedure and Evidence Act No. 67/1938 and by means of a copy of the record and judgment of this case, the Attorney - General is hereby notified of the court's special finding.

B. DUNN

JUDGE.