

IN THE HIGH COURT OF SWAZILAND

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REX

vs

ABEDNEGO SICHEFE SIGWANE

SOLOMON NKULULEKO SIGWANE

ALMON ADINA MAMBA

Crim. Trial No. 107/1997

Coram	S.W. SAPIRE
FOR CROWN	MR. J. MASEKO
FOR DEFENCE	MR. DLAMINI

JUDGMENT

(26/3/98)

The three accused were charged with the murder of Lucy Maziya. It was alleged that they killed her by setting her alight, in her hut on the 21 st of April, 1996 thus causing her to be burnt to death. The third accused, Almon Adina Mamba was discharged at the end of the Crown Case.

Accordingly before the Court now are Abednego Sichefe Sigwane and Solomon Nkululeko Sigwane.

The death of the deceased and that she died of burning was not in dispute. This was proved by the admission by consent of the evidence of the doctor who performed a postmortem examination on the body identified to him as that of the deceased. The doctor found the body to have been extensively burnt and ascribed severe burns, which consumed a large part of the body

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to have been the cause of death.

The crown alleges that it was the two accused who set the unfortunate victim alight with the intention of killing her. In support of this allegation a single eyewitness testified to the accused persons' involvement. This witness was Mavela James Sigwane a nephew of the first accused. Because he bears the same surname as the two accused I will refer to him by his first name, Mavela

Mavela described how on the 20th April, 1996 he was to have attended a night vigil together with the second accused, who is apparently his cousin. They were together at accused no. 2's place but before they set off for the vigil accused no. 1 came to them and insisted that they accompany him to the deceased's homestead. Accused no. 1 is an older man and seemed as father of the second accused to have been in a position of authority over him as well as over the witness. He warned them that if they did not obey him they would find themselves in serious trouble.

As far as he was concerned he was concerned Mavela seems to have been told, or gathered what the intentions of Accused No. 1 were and he accompanied accused no. 1 and no. 2 most reluctantly. On the way to deceased's home, they met Almon Mamba, who was the 3rd accused and who was also summoned to join them.

When they arrived at the deceased's home accused No. 1 and accused No. 2 went into the hut in which the deceased was sleeping. According to Mavela, No. 1 was armed with an axe and no. 2 with a knife.

Mavela and Almon remained outside, and took the opportunity of trying to hide and distance themselves from what was going on. Each moved off in a different direction. No more is heard of Almon on this account. It is for this reason that he was discharged at the end of the Crown case as there was no evidence of his participation.

Mavela attempted to hide himself at a nearby bush and apparently still had with him a 2-litre container of petrol. The evidence is not very clear as to how he came to be in possession of the petrol, but the inference, which the prosecution seeks to draw is that at the command of accused no. 1 he was carrying it to the deceased's house. This aspect of the matter was not satisfactorily investigated or explained. What happened next is that after a short while Accused

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no. 1 and accused no. 2 emerged from the deceased's hut and came looking for Mavela. They found him where he was hiding. It is strange that if Mavela wished to distance himself from the scene why he chose as his hiding place a bush close to the deceased's hut. One asks why did he not leave the scene and return to where accused no. 1 had found him or go back to attend the vigil as it was his original intention. Why did he remain in possession of the container of petrol?

Mavela further recounts how having found him, the two accused drove him back into the hut and accused no. 2-took the petrol with which he doused the body of the deceased. She by this time had been at least rendered unconscious, if she was not indeed dead.. While the second accused was so engaged Mavela took a child who was in the house to a neighbouring hut and availed himself this opportunity to escape. He left the two accused at the deceased's house. He went straight to the house of accused no. 2 where he had been earlier but before he reached there he saw the flames in which the deceased's hut was enveloped. According to him he remained until the return of the accused who warned him not to disclose what had happened at the risk of his own life.

The two accused gave evidence. Without trying to establish any alibi, both denied the evidence of Mavela in toto. They denied that they were the ones responsible for the death of the deceased. Neither was an impressive witness and their denials were bald and uncircumstantial.

Accused no. 1 did admit that he had dreams in which the deceased had featured, and which connected her with the death of accused no. 1's son. He considered this of sufficient importance to have taken up the matter with the deceased but he denied that he in any way held her responsible for his son's death and certainly denied in effect that he killed the deceased because of any responsibility on the part of the deceased on the son's death. Little weight can be attached to this evidence as establishing a motive on the part of the accused to murder the deceased.

At the end of the defence case, counsel for the defence indicated that he wished to call Almon Mamba, the third accused who had been discharged at the end of the crown case. For some reason this witness was not available to defence counsel and he closed his case without calling him. After the close of the defence case I had him called.

He claimed that he knew nothing of the events surrounding the death of the deceased. This is of course

again a contradiction of the evidence of Mavela as Mavela placed him at the

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scene of the murder without implicating him as participating therein. This is an example of what happens all too frequently in trials of this nature. A murder is committed but the members of the community close ranks to withhold the truth. I consider that Almon is not telling the truth. The only evidence therefore that it was the two accused who murdered the deceased is that of Mavela. The defence argued that he is an accomplice and that applying the cautionary rule which are to be applied when considering accomplice evidence his testimony was not sufficient upon which to convict the two accused.

Mavela was not, however, an accomplice witness. He did not participate in the commission of the event except perhaps to the extent that he accompanied the accused to the home of the deceased and assisted them by carrying the container of petrol. His acts, however, amount no more than the acts of preparation which he performed under duress. When the time came to commit the offence he distanced himself from the other accused. There is nothing to contradict him on what he says took place and I accept that he did not participate in the killing of the unfortunate woman. It is of course competent to find the accused person guilty on the single evidence of a witness. But in order to do so his evidence must be satisfactory in all material respects. The question in this case therefore is whether the matters I spoke of earlier constitute imperfection in his evidence rendering it unsatisfactory in material respects. I do not consider this to be the case. The question of the possession of the petrol is not the material circumstance and as I have observed it has not been investigated in the course of the trial. He was also not cross-examined at any length as to why if he wished to distance himself from what he knew to be the commission of an offence he did not run away altogether but remained on the scene. It was a criticism of his action but not of his testimony. There may have been some reasons why he had to do it this way. And his behaviour is not indicative of any deceit on his part.

Whatever criticisms there may be they are outweighed by the consideration that there was no reason for him to falsely implicate the accused who are his kin. He gave his evidence in a convincing manner and I find it to be credible and trustworthy, sufficiently so the extent that the weak denial of the accused must be rejected as being untrue beyond reasonable doubt. In accepting his evidence it seems that it is relevant that he will still after this trial be a member of the family and continue to live in the community. If it is general knowledge that he was falsely implicating the two accused his life in this community would not be bearable as the accused are his close relatives.

In view of the tendency which I have observed for members of the community to close ranks and suppress the truth, his giving evidence is a brave act.

For these reasons I find that it is proper to convict the accused on the evidence of the sole witness and they are accordingly found guilty as charged.

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EXTENUATING CIRCUMSTANCES

I have found both accused guilty of murder and the question of extenuating circumstances now arise. The accused no. 1 has not given any evidence of extenuating circumstances and it had been argued that because of this it will not be correct for the Court to find extenuation. I cannot agree with this submission because the whole crown case has shown that the reason for accused no. 1 killing the deceased who was his sister was that she was believed by him to be responsible for the death of his son through witchcraft and the use of muti. Counsel for the defence has not called accused no. 1 himself but has based his argument in mitigation on the fact that the accused did kill this woman because of this belief in

witchcraft and I find that there is room for the conclusion that this submission made by defence counsel is probably correct on the balance of probabilities looking at the evidence as a whole. This belief in the power of witches remains widespread. In the case of No1 accused such belief obviously clouded his mental processes so as to reduce his moral culpability albeit not his legal responsibility

I therefore find that there are extenuating circumstances in this case

The case of no. 2 the evidence is clear that he acted on instructions and in fear of accused no. 1 and assisted him in view of the position of authority accused no. 1 exercised over him. In this case too extenuating circumstances are found to exist.

SENTENCE

Accused no.1. I have listened carefully to what your counsel has said regarding the mitigating circumstances in your case. They relate mainly to your age, and the fact that you are the father of a family many of whom are dependant on you for the support. As far as the said consideration is concerned there is hardly a case which comes before this Court where a custodial sentence is appropriate where the accused does not have people dependent on him or partially dependant upon him for their maintenance. It is not possible in such a case to impose anything other than a custodial sentence.

You have been found guilty of murder and the evidence shows that the deceased was put to death in a most cruel way. In saying this I still bear in mind that she may have been rendered unconscious before she was set alight. But nevertheless yours was a premeditated act, you prepared yourself for it and you committed the act as I have found deliberately because you believed that your sister the deceased was responsible for the death of your son. Although the

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Courts recognize your motive as mitigating circumstances this sort of behaviour cannot be countenanced and as I have indicated recently in the past few weeks in other cases of this nature a message cannot go out to the public that murders of this sort would be somehow condoned. Whether you consider the person to be a witch or not it does not give you the right under law or custom to kill that person. She was killed without being given the opportunity to defend herself, either against your allegations or against your assault. You have shown no remorse and you have not told the Court that you are sorry for what you have done and that you have any regrets that you killed the deceased.

In your case I sentence you to 12 years imprisonment.

As far as accused no. 2 is concerned , in your case it has not been argued that you had any belief in witchcraft and the only circumstance in your favour is that you acted under some sort of compulsion from accused no. 1 who is your father. He has set you a very bad example. And there is no reason why you did not refuse to participate in or decess from the attack as did the crown witness Mavela. In your case too you have expressed no regret or remorse but the fact remain that you acted under the influence of a person in authority over you and to whom you have some duty of respect and obedience. But no one is excused for committing murder in the circumstances but your subordinate position and your relative view influence me to give you a substantially lesser sentence than accused no.1.

Your sentence will be 8 years imprisonment.

Both cases the period of imprisonment imposed on the accused will be deemed to have commenced on the date they were taken into custody which is 28th December, 1996.

S W Sapire

Acting Chief Justice