

IN THE HIGH COURT OF SWAZILAND

CRIMINAL CASE NO.102/98

IN THE MATTER BETWEEN:

REX

VS

RUFFAS KUNENE

CORAM : **MATSEBULA J**

FOR THE CROWN : **MS. LANGWENYA**

FOR THE ACCUSED : **MR. B. SIMELANE**

JUDGEMENT

22/03/99

The accused stands charged with the crime of murder. The allegation being that on or upon the 25th July 1997 at or near Lung Yeong Bar in the Manzini, acting unlawfully and with intent to kill assaulted Makhosi Dlamini and inflicted a knife wound upon him from which the said Makhosi Dlamini died.

When the charge was put to the accused, he added a statement that amounted to a defence and said that he was being attacked by the deceased and managed to dispossess him of the knife and then stabbed him with it. He stated in so many words that he injured the deceased in defence or in private defence. What he said amounted to culpable homicide because a person had died at his hands.

Mr. Simelane who is representing the accused informed the court that what the accused had said was in accordance with his instructions. I thereupon invited Ms. Langwenya to find out whether she was in agreement with the plea as tendered by the accused and confirmed by his counsel and she answered in the affirmative. I then invited Ms. Langwenya to the facts leading to the incident of stabbing and she did so and I will repeat them for the purpose of this judgement.

She stated that on the 25th July 1997 accused was at this Lung Yeong Bar in Manzini enjoying some drinks. The deceased who was also present there then proceeded to grab hold of liquor belonging to the accused. That was in itself provocative. The accused did the right thing instead of retaliating either by hitting the person who was dispossessing him of his liquor to which he was legally entitled he went and reported this to the watchman who keeps order at such places. Unfortunately, the watchman for one reason or another was unable to attend to the complaint brought by the accused, he said he was busy. Apparently the deceased was in the company of girls who, after realising the attitude of the deceased, decided, on behalf of the deceased to pay for the liquor the deceased had taken from accused as a replacement. When the deceased realised that the girls had paid the accused the equivalent of the liquor he had taken from accused, he went to the accused and pushed him to a corner and threatened to stab him with a knife. That again was a very wrongful act and behaviour on the part of the deceased. When the accused realised that the deceased meant business about stabbing him he picked up a chair and struck the deceased who had at that time had the knife in his possession. The knife fell to the ground and a struggle ensued between the accused and deceased for the possession of the knife and the accused managed to gain possession of the knife. Once the accused had gained possession of the knife he then stabbed the deceased.

By consent the post mortem report that was prepared by Dr. Mohan was handed in as exhibit "A". It gives the age of the deceased as being plus minus 24 years. It also gives the result of the death as shock and haemorrhage consequent to stab injury of the lung. On page 2 of exhibit "A" the doctor described in details how the injury that caused the death of the deceased penetrated the deceased.

Mr. Simelane confirmed that the facts stated by Ms. Langwenya are the facts that he too has obtained from the accused through accused's instructions. Obviously the facts stated by Ms. Langwenya must have come from people who were Crown witnesses who would have included the girls who were in the company of the deceased.

On numerous occasions, this Court has sent out a very clear message that the use of knives should be discouraged at all costs especially if people go to places where liquor is being consumed. The message that this Court can only send is by sentencing people who have been convicted to an appropriate sentence which will send a very clear message that at no stage must a knife be used by a person who goes to pubs. If the knife belonged to the accused and he had produced it and had used it in self-defence this would be a different attitude. The court would adopt a totally different attitude instead the deceased carried a knife into a place where knives are not supposed to be carried and started behaving in a bully fashion disturbing people who were minding their own business and enjoying their liquor. To move from wherever you are seated and go

another person enjoying his liquor that he is entitled to and for which he has paid and then dispossess him of the liquor and expect him to keep quiet is rather asking too much. Infact on the contrary instead of the accused reacting violently as one would have expected him to have done so, he did not, he followed the correct procedure and reported the matter to the people who are supposed to keep the place in order. The person who keeps order failed to take appropriate measures and restore order but the people who were in the company of the deceased realised that the deceased was doing wrong and paid the accused an amount equivalent of the liquor taken by the deceased. The deceased thereupon, in an apparent attitude of saying “why do you pay him, I have taken this liquor because I am the boss here” then decided to push the accused to a corner and threatened him with a knife he was armed with.

It was under these circumstances that the deceased met his death. I can only say he was the author of his own misfortune because if the accused had not succeeded in grabbing hold of the knife it would have been the deceased before me for killing an innocent man.

The accused is represented by an experienced counsel and the Crown is also represented an equally experienced counsel. Perhaps due to the amount of work, they decided that a plea of culpable homicide would be acceptable but in my view, a proper defence here would have been private defence or self-defence and the accused would have been acquitted. I have no discretion to change what the two counsel agreed upon. They have the facts, possibly other facts would not have been given but that is what they have agreed upon and the plea of guilty to culpable homicide would be justifiable in the circumstances and I retain such a plea.

JUDGEMENT ON SENTENCE

I have been told that you are a first offender and as I have indicated in my judgement the deceased was the author of his own misfortune and this led to his death. Young people of the deceased’s age group should stop going to pubs and act in a bully fashion because they might find themselves in more trouble than they anticipated. I wish the relatives of the deceased were present so that they could hear why I have given this judgement and why I contemplate giving the sentence I am about to give. Parents too must do their best to train their children not to behave in a fashion that would result in someone losing his life.

What usually happens people read reports from the press about someone who had killed another that has been acquitted without confining or worrying themselves about the facts leading towards the result of the sentence. There is no court in Swaziland that would allow a person who is guilty to go free or give him a sentence that encourages others to commit crimes. It is clear that if the accused had not dispossessed the deceased of the knife he would be the deceased in this case.

Considering all these facts and taking into account the other mitigating factors that Mr. Simelane brought to my attention the accused will be sentenced to an imprisonment for three years which will be wholly suspended for a period of three years on condition the accused is not convicted of any crime, during the period of suspension, involving violence for which he is sentenced to an imprisonment without an option of a fine.

J.M. MATSEBULA

JUDGE