CASE NO.194/98

In the matter between:

REX

VS

GENERAL MBUTFO MSIBI

CORAM	**:**	**MASUKU J.**
For the Crown	**:**	**MR J.W. MASEKO**
For the Accused	**:**	**ADVOCATE E.V. THWALA**

JUDGEMENT
13/04/2000

The indictment reflects that the accused is charged with three counts, as follows: -

COUNT 1

Attempted murder, in that upon or about the 8th November, 1997 and at or near Ka-Khoza area (Township) in the District of Manzini, the accused acting unlawfully And with intent to kill, did shoot and injure on the head one Mxolisi Sigidi Dlamini.

COUNT 2

Contravening Section 11 (i) read with (8) of the Arms and Ammunitions Act 24/ 1964, as amended in that upon or about 9th December, 1997 and at or near Mhlaleni area in the District of Manzini, the accused, not being the holder of current licence or permit to possess a firearm did unlawfully have in his possession a 9 mm pistol Serial No. G101371.

COUNT 3

> Contravening Section 11(2) read with 11 (8) of the Arms and Ammunitions Act 24/1964, as amended in that upon or about 9th December, 1997, and at or near Mhlaleni area in the district of Manzini, the accused not being a holder of a current licence or permit to possess a firearm for which ammunition is intended to be used did unlawfully have in his possession one live round of ammunition.

Before the accused could be called upon to plead, the Crown, in exercise of powers conferred upon it by the provisions of Section 6 of the Criminal Procedure and Evidence Act No. 67/1938, as amended withdrew counts 2 and 3. The accused was thereupon called to plead to Count 1 only and to which he pleaded not guilty, a plea which was confirmed by his Counsel.
The Crown and the Defence made certain admissions and by consent, a firearm bearing serial number G101371, being a 9mm pistol was handed in and was marked Exhibit "1". It was agreed that it carried by the accused person, when the offence in question was committed and the accused used it to shoot the complainant. It was agreed further that Superintendent Khethokwakhe K. Ndlangamandla, was led by the accused to Mhlaleni and the accused did there point out Exhibit "1", which was found in a field among pumpkin leaves.There was further agreement regarding the nature and extent of the injuries suffered by the complainant as a result of the shooting by the accused. In this regard, Form R.S.P. 88, which is a medical examination report prepared by Dr Dejene was admitted and was marked Exhibit "A".Exhibit "A" reflected that the complainant sustained a bullet inlet wound on the left frontal scalp and an outlet wound on the left anterior parietal with a compound fracture of the skull. There was a rupture of the brain and oozing of dural tear. It also states that the patient underwent craniotomy and the fragments of the bone within the brain and in the surface were removed and that the dural was torn. As a result bleeding was found in the brain. The dural was immediately repaired and the bleeding stopped.The Crown proceeded to call four witnesses in support of its case. PW 1 was Dr Dejene Jelay, a General Surgeon employed by the Raleigh Fitkin Memorial Hospital in Manzini. He confirmed the contents of the report as recorded above. He stated further that in his opinion, the injuries sustained by the complainant were serious and life threatening. It was his further evidence that some people who sustain such injuries do recover whilst others do not fully recover as they develop paralysis or epileptic fits. In other cases, the patients even die before they can be submitted to surgery.In cross examination, the Doctor was

asked to confirm if he observed one injury and he agreed, adding though that the said injury affected the skull, the brain cover and the brain itself. He stated further that according to his observation, there was one gunshot wound, indicating that the bullet entered in the front and went out at the posterior of the head. The Doctor, on further enquiry by the Court testified that the complainant recovered fully without any neurological deficit up to the time of his discharge. He proceeded to state however that there is a possibility of other complications occurring later in the complainant's life, including seizure and epilepsy.PW 2 was Mxolisi Sigidi Dlamini, the complainant. It was his evidence that he resides at KaKhoza. On the 8th December, 1997, he was at New Village, Mhlaleni where he was imbibing liquor. He thereafter left New Village and went to a Khumalo homestead just above his home at KaKhoza and sat there in the company of Nathi and Sifiso Khumalo and Malindane Ndlandla. The foursome then decided to go to a shebeen to purchase some liquor. It was PW 2's evidence that when they reached the Dube homestead, he stopped in order to urinate and his companions proceeded on the way.PW 2 further testified that at that point the accused came and he (PW 2), turned and stopped the accused person. He asked for E1.00 but the accused stated that he did not have any money. As PW 2 turned away to proceed with his journey, the accused stopped him and produced a firearm, informing PW 2 that had he continued, the accused person would have used "this", pointing to the firearm. It was PW 2's evidence that he then tried to dispossess the accused of the firearm and a struggle for the possession of the firearm ensued. On realising that he could not dispossess accused of the firearm PW 2 decided to show a clean pear of heels and ran towards a Banda homestead.On arrival at the Banda homestead he ran around the homestead and when he came to the other side, he met the accused who had drawn the firearm and the accused shot PW 2 on the head with it. It was PW 2's further evidence that he had to run around the Banda house because he intended entering that house for purposes of safety but found that the door was closed. PW 2 stated that after being shot he fell down and became unconscious, only managing to recover his consciousness after five days. PW 2 further testified that he had occasion to see the accused at Lozindonga after he was discharged from hospital. It was his further evidence that he had not provoked the accused prior to the shooting and that although he had seen the accused person previously, they had never quarrelled.In cross-examination, the following was elicited: Firstly, that the incident in question occurred at about 21h00 and further, that PW 2 had started drinking alcohol at 13h00. He conceded that by the time when he was shot he was not sober. He however denied that his observations were suspect because of his state of mind. He stated that he remembered very well all that occurred on the said day.It was put to him that he had, by approaching and blocking the way of a complete

stranger provoked the accused. PW 2 stated that although he was not used to the accused he however knew him and stated that he blocked the accused's way only because of inebriation, his sole aim having been to ask for money in order to purchase a cigarette. When asked why he attempted to dispossess the accused of the firearm, PW 2 stated that it was because the accused was carrying a weapon and feared that the accused could use the same to inflict injuries on PW 2. Mr Thwala stated that the accused would say that when he met PW 2, the latter was in the company of two people and that the group accosted the accused asking for 50 cents. This PW 2 denied, reiterating that he was with the three people mentioned in his evidence in chief. He further denied being in anybody's company when he met the accused.Mr Thwala further asked what the amount PW 2 reflected in his statement to the Police, which he said he was asking from the accused person was. PW 2 stated that it was 50 cents. It was put to PW 2 that the accused would say that he was carrying the firearm for purposes of self-defence and would further state that he provoked no one. PW 2 in response stated that he could not admit or deny that the accused was carrying the weapon for self-defence and did not know whether or not the accused provoked anyone.Mr Thwala stated further that the accused would say that PW 2 and his companions were strangers and that these people manhandled the accused person when he said he did not have money and he thereafter the became afraid. This PW 2 denied, insisting that he was alone when he met with the accused person and stated further that there was no one in front of him. PW 2 denied the suggestion that the accused had aimed at shooting above his assailants heads in order to scare them away and further denied that the accused shot in the air in self-defence. In response to some questions by the Court, PW 2 stated that he knew the accused as he (PW 2) used to see the accused on the road to Lucky's place and that he had seen the accused two days before the incident in question.PW 3 was Sifiso Khumalo, who confirmed PW 2's evidence regarding that he was with PW 2 and two other boys on the 8th November, 1997. He stated that he was also drunk but confirmed walking with PW 2 and two other boys to a shebeen. He further confirmed that PW 2 stopped along the way to urinate and that he and the other boys proceeded to their destination. They found that there was no beer at that place and proceeded to PW 3's aunt's place which PW 2 knew very well and they bought a bottle of beer. Still, PW 2 had not arrived. It was PW 3's evidence that they heard a gunshot and thought it was the Police who were shooting as they sometimes do during their patrols.

PW 3 further testified that on the way home, they met a Freddy who informed them that PW 2 had been shot and was injured. PW 3 denied that he and his companions accosted the accused as a result of which the accused shot in the air to disperse them.In cross-examination, PW 3 confirmed that part of the reason why they walked in a group was for purposes of security but

added that they were at the same time happy and socialising together. When asked why PW 2 was left behind if they were walking together for security reasons, PW 3 stated that PW 2 was born and bred in KaKhoza and that it never occurred to them that PW 2 could be injured next to his home. It was PW 3's further evidence that although PW 3 was inebriated, he could still differentiate between right and wrong. PW 3 stated further, under cross examination that in giving evidence, he had come to support his cousin. He also informed the Court that on that day, he had received his salary and he did not think that PW 2 was short of money as they had both contributed money earlier on towards purchase of the liquor.It was put to PW 3 that he could not correctly relate the events of the night in question partly on account of his state of insobriety but PW 3 stated that although he was drunk, he was conscious of what was happening, such that when they learned that PW 2 had been injured they immediately stopped drinking. PW 3 stated that although he was not there, he could not agree that PW 2 was accompanied by two people when he met the accused.It was further put to him that the accused would say that PW 2 took a leading role compared to the other two of his companions by stopping the accused and asking for money. PW 3 denied a suggestion that he was with PW 2 when the shooting occurred but removed himself from the scene in order to conceal what had happened. In re-examination, PW 3 denied ever parting company with Nathi and Malindane, after leaving PW 2 urinating.PW 4 was Nkosinathi Khumalo, who confirmed PW 2 and PW 3's evidence regarding their journey to purchase liquor and leaving PW 2 on the way urinating. He further confirmed PW 3's story that they found no beer at the place where they had intended to purchase the liquor. He testified that they then heard a gun shot but thought it was the Police who were shooting and they went back to the house. It was his evidence that they then met Freddy who informed them that the deceased was injured and had been conveyed to the hospital. He also denied parting with his companions after leaving PW 2 urinating.In cross-examination, PW 4 was asked if he knew the accused person and his answer was in the affirmative. He stated that he had seen the accused person on many occasions but denied seeing him on the night in question. PW 4 denied the suggestion that PW 2 and two others, who included PW 4, accosted the accused person on his way to KaKhoza. He further stated that when he heard the gunshot, it did not occur to them to go and look for PW 2 because PW 2 knew where they were heading and that they thought he was still coming to where they were. PW 4 vehemently denied being present when PW 2 allegedly accosted the accused and further denied vanishing from the scene in order to conceal his involvement in PW 2's injury.ANALYSIS OF CROWN'S CASEThere are some observations which need to be made regarding the evidence led by the Crown.

It is necessary to state at the outset that there are some curious features of the Crown's case. Firstly, PW 2's evidence is not very clear as to why he decided to attempt dispossessing the accused person of the firearm. This is so because there was no indication in PW 2's evidence that apart from saying that if PW 2 had continued, the accused would have used the gun, there was any threat, whether oral or by conduct which could reasonably suggest that the accused evinced an intention to shoot the complainant. PW 2's apparent irrational conduct could be attributed to his confessed large in-take of alcohol. I say this noting however that the defence never denied this part of PW 2's evidence.Another feature which causes spasms of disquiet relates to the contradiction in the evidence of PW 3 and PW 4. PW 3 stated that after reaching the homestead where they did not find the supply of alcohol, they proceeded to his aunt's place where they purchased one bottle of beer. PW 4 denied having gone to another homestead after finding no beer at the first homestead.A further worrisome issue is that in re-examination, PW 3 stated that he and PW 2 contributed a total amount of E20.00 for the purchase of alcohol in order for them to buy four bottles. He did not however explain why they bought one bottle when they had initially decided to buy four and had the money in their possession.I was also ill-at ease with the exact place where the Freddy broke the news of PW 2's injury. PW3's version was they met him on their way back from the shebeen and I understood PW 4 to confirm the same story in his evidence in chief. However, in cross-examination, PW 4's evidence was that Freddy informed them of PW 2's injury when they reached home. This causes me to treat the witnesses' evidence relating to the portions above with circumspection, especially regarding the contradictions. These contradictions are however not material to the Crown's case. I have also reminded myself of the instructive remarks of Nicholas J. in **S v OOSTHUIZEN 1982 (3) SA 571** at **576H,** where the learned Judge stated as follows:-

> *"All that can be said is that where a witness has been shown to be deliberately lying on one point, the trier of the fact may (not must) conclude that his evidence on another point cannot be safely relied upon."*

I have also considered Mr Justice Nicholas' comment in the South African Law Journal, 102 (1985) at 32 when he stated as follows:-

> *"where a witness has made contradictory statements, since both cannot be correct, in one at least he must have spoken erroneously. Yet error does not in itself establish a lie. It merely shows that, in common with the rest of mankind, the witness is liable to make mistakes. A lie requires proof of conscious falsehood,*

proof that the witness has deliberately misstated something contrary to his own knowledge or belief.

This is how I regard PW4 in regard to the above contradictions. In this regard, PW 4's evidence I find to be highly suspect as he contradicted that of PW 3 and his own and that is discussed above. In other respects, he corroborated the evidence of PW 2 and PW 3. On the whole, I find the evidence of PW 2 and PW 3 credible, save where otherwise indicated. I also take into account the fact of their confessed state of inebriation, which may have affected their recollection of the events, taking into account also the lapse of time. The three witnesses were however standing in unison regarding the question of their involvement in the alleged accosting of the accused person. In my view, the Crown managed to prove a *prima facie* case requiring the accused person to be called to his defence.

THE DEFENCE CASE

In his evidence given under oath, the accused had this to say:- He stated that on the day in question he was at Bosco Skills Centre where he worked as an upholsterer. He knocked off at around 20h00 on account of the lot of work he had to do. He then went to Kakhoza location to his girlfriend and arrived there at around 21h00. He stated that he hired a taxi which dropped him next to the traffic lights at the junction to Mhobodleni. His destination was about 800 to 1000metres away. It was his evidence that when he was next to Freeway shop, three gentlemen approached.

The accused further testified that he was carrying a firearm because he had been robbed three times before when he went to visit his said girlfriend. It was the accused's evidence that he had never seen the men who approached him. One of the three went to the accused and asked for 50c whereupon the accused announced that he was penniless. That notwithstanding, the man persisted in asking for the money. Accused said he would have given the man the money if he had it as it was a small amount.

Accused testified that it was very dark such that you could not even recognise a person that you knew.

It was the accused further evidence that the two other gentlemen produced knives and asked him who told him to walk around KaKhoza at night and where he was from. In the face of this confrontation the accused drifted back and one of the assailants threatened to stab him. As the accused retreated, he tripped and fell to the ground. He then drew out the firearm which was placed under the waist at the back, secured onto the body by the waist belt. It was accused's evidence that he then realised that there was donga behind him. He tried to shoot into the air, whilst still on the ground. He then saw the man who had approached him first fall to the ground and the accused assumed that he must have fallen due to shock as the sound of the gun was loud. He never thought that the said person fell due to an injury and this accused said he assumed so because of the angle at which he raised the firearm.

It was the accused's further evidence that after this episode, he ran straight to his girl-friend's place where he slept and in the morning, he went back to work. He stated further that he never got to learn about PW 2's injury as he does not live in that area and hardly visited KaKhoza area. He further stated that he never aimed at any body when he released the trigger and did not intend to murder or injure anyone. It was his further evidence that he never provoked his assailants in any manner whatsoever.

The accused was subjected to scorching cross-examination by Mr Maseko and I intend to highlight important aspects thereof. The accused conceded that he was arrested on the 9th December, 1997 at Mhlaleni by Superintendent K.K. Ndlangamandla and in respect of which he was charged and convicted. The accused stated that during all the occasions when he was robbed, it was at night. He was asked as to why he chose to travel to KaKhoza at night in view of previous robbery incidents and he stated that he had a lot of work to do and did not have money to hire a taxi to Lobamba, where he stayed. When asked why he did not close down the business for the day in time in order to finish the following day, accused's answer was unsatisfactory. He said that he just regretted why he took that option and that had no good reason that decision.

The accused conceded further under cross-examination that he did not possess a firearm licence. When asked why he decided to carry the firearm, the accused stated that he wanted to keep it with his girlfriend having recently obtained it and stated that he had been keeping it at his place of employment. The accused stated that he obtained the firearm from a small boy a

month earlier and to whom he gave E50.00. The boy told him that he had found the firearm and wanted money.

From the cross-examination, the accused confirmed that he knew that the firearm was genuine and also knew that it was serviceable. The accused further stated that he did not obtain a firearm licence because he did not know the channels he had to follow in order to obtain the same. When asked why he did not report to the Police about the firearm, the accused stated that it was a mistake and that he had no plausible reason therefor. He stated that he obtained the ammunition from his friend to whom he showed the firearm. His friend gave him two rounds of ammunition.

The accused further told the Court by the time he shot the deceased his friend had taught him how to use the firearm. The accused denied the suggestion that PW 2 was alone when he approached him. He insisted that there were three persons and only one spoke to him. The accused said that he did not know the complainant and had never even seen him, and did not know his name. According to the accused, the conversation between him and PW 2 took about five minutes or less.

He conceded that PW 2 never fought him but the trouble only started when his friends produced knives. It was put to the accused that he took advantage of PW 2's drunken state and shot him out of malice. The accused stated that he did not know whether or not PW 2 was drunk. He further stated that as far as he was concerned he considered PW 2 as a person who came to provoke him. No re-examination was forthcoming from Mr Thwala . The defence then closed its case.

ANALYSIS OF DEFENCE CASE

The first insuperable difficulty facing the defence in this matter is with regard to the fact that the whole defence case was not put to the Crown's witnesses as required by the celebrated case of **S v P 1974 (1) SA 581 (Rhodesia A.D.)** and **S v Mngomezulu Crim. Case No.94/90,** (unreported) per Hannah C.J. as he then was). As a result, the Court did not have the benefit of seeing the reaction of the Crown's witnesses to those issues which are very crucial to the defence case.

The issues which were raised for the first time when the accused took the witness' stand are the following:- First, it was never put to the Crown's witnesses that the accused was carrying the firearm on the night in question for purposes of self-defence as he had been robbed three times previously. Second, it was never suggested to any of the Crown's witnesses that the people who allegedly attacked the accused persons were carrying knives. This only emerged in the accused's evidence in chief. Third, it was never put to any of the Crown's witnesses that the accused person fell down and was cornered by his assailants, thereby rendering it necessary for him to shoot in order to scare his assailants. Fourth, it was never put to any of the Crown's witnesses that there was a donga which made it impossible for the accused person to flee to safety.

According to the *rationes decidendi* of the above cited cases, I accordingly draw an inference that all the above-cited issues must necessarily be regarded as an afterthought and I hold that it is so. These are important issues which are very significant and crucial to the accused's defence and which should have been in the forefront of his mind when he gave instructions to his Counsel. That he failed to let his Counsel know of these is susceptible to only one conclusion, that the issues are an afterthought.

The accused was hopeless as a witness and this became evident in cross-examination. He was in respect of certain issues vague and in respect of others, he failed to answer straightforward questions. In other cases, he pretended not to understand the questions. In such instances, he gave answers that veered off from the essence of the posed questions. It has been stated and correctly so in **S v KELLY 1980 (3) SA 301 AT 308C** that "Demeanour is, at best, a tricky horse to ride. There is no doubt that demeanour…can be most misleading." In this case, although the accused showed great composure in his evidence in chief, he cracked under cross-examination. What the Court witnessed from the accused's demeanour in this case was what was aptly described by Osborne, "The Mind of the Juror," 1937, page 86, where he states:-

> *"The witnesses speak…not by words alone… Their faces and their changing expressions may be pictures that prove the truth of the ancient Chinese saying that a picture is equal to a thousand words…"*

The accused's hesitation and uncomfortableness gave him away. In particular, I noted this when it was put to him by Mr Maseko that the issue of him being attacked with knives was an

afterthought. He became highly fidgety. His attempt to simulate an honest demeanour dismally failed when he subjected to cross-examination.Second, in his evidence in chief, the accused stated that his assailants, the ones who were carrying knives asked him why he was walking at KaKhoza at such a time and where he came from. In cross-examination however, the following question was posed, as recorded in my notes:-Q: I suggest that the only people who could be with PW 2 were PW 3, PW 4 and Ndlandla. A: I do not know those persons but they were three and only one spoke to me. (my own emphasis)

It is clear from the foregoing that the accused was contradicting what he had stated in his evidence in chief, namely that the three persons asked him why he was walking at that time and where he came from.Third, in his evidence in chief, the accused stated that it was very dark that one could not even recognise people that one knew. It becomes something of a wonder as to how the accused could in that gloom see that it was PW 2 and not one of his other assailants who fell to the ground.I also formed an impression that the accused lied in some respects and his story was in other respects improbable. The accused stated in cross-examination that he did not see whether the accused was inebriate and this he attributed to the fact that he did not know the accused before and could not therefore tell whether he was drunk or not. In this regard, the accused lied. This is so because it was put to PW 2 by his Counsel that PW 2 was highly inebriate. Mr Thwala could only put that on the accused's instructions. The reason for this lie is not difficult to find. If the accused acknowledged that PW 2 was drunk, there could have been no reason for him to have shot PW 2. Furthermore one does not need to know a person to see that they are inebriate. Their conduct and speech normally tell the whole story.It is also worthy of note that the accused, earlier in cross-examination stated that PW 2 was not fighting with him. At the end of the cross-examination however, he stated that he regarded PW 2 as a person who had come to provoke him. It is noteworthy that the accused's story is riddled with lies. It is inconceivable that he could get the firearm from a child whom he does not name. His friend who trained and gave him ammunition also does not have a name. The reason why he decided to knock off late was unsatisfactory and so was the reason why he did not report the firearm to the Police. His failure to obtain a firearm licence, is unconvincingly explained. A further mystery is with regard to the accused's story that he kept the firearm at his place of employment. With this in mind, it is inconceivable that his friend would have tested the firearm and shown the accused how to use it at the place of employment. I also find it very strange that the accused would prefer to keep the firearm at his girl-friend's place when he did not live there and would, regard being had to part of his story, need it when he visited KaKhoza for his safety.It would have made sense to keep the firearm at Lobamba where the accused

alleged that he stayed. The accused's story becomes more fictional when regard is being had to the fact that the firearm was actually found at Mhlaleni and not at KaKhoza where he had purposed to leave it. The reason why the accused would prefer to work late knowing full well that he did not have enough transport money and would also risk being robbed begs reason. The proper and reasonable thing to do was for him to knock off early and use the money to pay for bus fare rather than to hire a taxi to go to KaKhoza where the possibility of robbery existed. The alleged robberies are themselves highly suspect because no mention of reports to the Police was ever made.Sight should also not be lost of the fact that certain important allegations made by PW 2 were not challenged by the defence. These include PW 2's allegation that PW 2 was told by the accused that if he had continued, the accused would have used the firearm on him; that the accused chased PW 2 and that PW 2 ran to the Banda homestead where he was shot by the accused. Mr Thwala only put to the PW 2 that he got what he wanted. Furthermore, it was never put to PW 2 that the shooting never took place next to the Dube homestead as PW 2 stated but next to Highway store as the accused stated for the first time in his evidence in chief.In order for the Court to return a verdict of guilty on a charge of attempted murder, it is necessary that there should be an intention to injure, even though not to kill. It is not sufficient if there is an appreciation that there is some risk involved in the action contemplated coupled with recklessness as to whether or not the risk is fulfilled in death. See **R v MNDEBELE 1970 – 76 SLR 198 @ 199.**

In my view, it is clear that the accused set out on the night in question with a dangerous weapon which he knew was functional. After speaking to PW 2, who was asking for money, he told PW 2 that if he had continued he would have used the firearm on him no provocation. Thereafter, a struggle ensued between them for the possession of the firearm which resulted in PW 2 running away. The accused pursued PW 2 and shot him at the Banda homestead, thereby making real his earlier threat to use the firearm.In my view, the accused harboured an intention to kill and he appears to have been excited by the fact that he was possessing the firearm hence he told PW 2 that he would have used the firearm on him. He said this to PW 2 who had not provoked him in anyway. He appears to have been trigger-happy having recently obtained the firearm if that aspect of his story is true. Considering the nature of the weapon used, the area of the body where the assault was directed together with the nature of the injuries inflicted, it is clear that the accused had an intention to kill the deceased. At the least, I am of the view that *dolus eventualis* has been proved in this case. The accused's story that he was cornered and then shot in self-defence has already been dismissed as an afterthought. It is also highly improbable that PW 2 would have sustained those injuries in the manner and places he did if

the accused was lying down as he would have the Court believe. PW 2 would not have been injuries in the manner and places he did in the head unless he was bending down towards the accused when the trigger was pulled, a story which was never suggested to PW 2. The defence case was nothing but outright falsehood. The totality of the accused's evidence in my view leads to a conclusion that the accused is an unmitigated liar.The accused fully appreciated how dangerous the weapon he possessed was. He chased the deceased and pointed the firearm at him and fired a shot towards his head. This can only be consistent with a man who clearly intended to injure PW 2 at the least, if he did not intend to kill him.In **REX v JOLLY 1923 AD 176 at 187**, Kotze J.A. said. *"The intention of an accused person is to be ascertained from his acts and his conduct."*The accused's acts and conduct in this case lead to the only inescapable conclusion that the accused intended to kill the deceased as such is obvious from the injuries inflicted and the Doctor's opinion, which remains incontrovertible is that the injury was serious and life-threatening. It was only swift conveyance to the hospital and prompt action by the Doctor that saved PW 2's life.In the circumstances, I find the accused guilty of attempted murder as charged.**T.S. MASUKUJUDGE**