

# **IN THE HIGH COURT OF SWAZILAND**

**CRIMINAL CASE NO.138/99**

**In the matter between:**

**REX  
VS  
NORMAN DLAMINI**

**CORAM  
FOR THE CROWN  
FOR THE DEFENCE**

**MATSEBULA J  
MR. NSIBANDZE  
MR. TWALA**

---

## **JUDGMENT**

**13<sup>th</sup> March 2001**

---

The accused is indicted on two counts.

Count one - he is charged with murder. The allegation being that on or about the 31<sup>st</sup> October 1998 and at or near Zakhele in the Manzini Region, he did wrongfully and intentionally kill Raymond Baloyi and thereby committed the crime of murder.

Count two - the allegation is that on the same date and same area and region he did unlawfully and intentionally assault Idah Nyamba by striking her on the face and thus did commit the crime of assault.

The accused pleaded not guilty on both counts and was represented throughout the trial by Mr. Twala. Before the commencement of the trial a certain post-mortem report was handed in by consent. Mr. Twala then informed the court that the witness who was to be called to identify the body of the deceased should be dispensed with

as the identity of the deceased was not being challenged.

The two counsel initially indicated to the court that some tentative agreement had been reached that the Crown would accept a plea on count one to culpable homicide instead of murder. However on 23<sup>rd</sup> November 2000 the two counsel approached the court and indicated that they had since considered the matter and were of the view that the crime on count one was in fact of murder. The trial then proceeded on that basis. There was also initially mentioned that the accused would have deposed to a statement which would be challenged. However, only the interpreter gave evidence relating to the making of the alleged statement and towards the end of the trial the two counsel informed the court that the contents of the statement would not be challenged and would be handed in by consent. The post-mortem examination was handed in as exhibit "A" and the statement handed in as exhibit "B".

According to exhibit "A" the deceased died as a result of injuries to the lung and heart arising from an assault by a sharp instrument. The injury was measuring +3 x 2cm in the left second intercostals space directed downward and rightward and perforating the chest wall soft structures, upper lobe of the left lung and the pericardium. Left haemothorax +-21 of clotted blood, hemopericardial +-500ml of clotted blood.

PW2 Idah Nyambi is the witness who gave the evidence leading to the injury and the death of the deceased. Deceased was her husband or live-in-common wife. She knew the accused as one of the tenants at the premises where she and her late husband also resided. On the 31<sup>st</sup> October 1998 she was in the company of her husband and he was lying in bed. In the room were other people including women who were busy drinking. One woman had become so drunk that she started vomiting. The vomiting woman apparently went out and lay on the ground still vomiting. PW2 went out to see how she can assist the vomiting woman. It was as she was assisting the vomiting woman that accused also walked out of

the room where the drinking was taking place. Fearing that the accused would tramp on the vomiting woman, PW2 warned accused to be careful not to tramp on the woman. Apparently the accused did not take kindly to the warning by PW2 and he started using abusive language saying PW2 must go and "voetsek" and she must keep quiet, but subsequently she also swore at the accused whereupon accused produced a slasher and struck PW2 with it. Another man at whose room drinking was also taking place came out, grabbed hold of the slasher and intervened. The man went back into the room and PW2's sister went into PW2's room drew PW2's husband to the commotion. PW2's husband, the deceased came out and enquired from the accused why he, the accused assaulted his wife instead of coming to report to him as husband if she had done anything wrong. According to PW2 accused then asked the deceased what he contemplated doing about the assault on deceased's wife. Deceased told accused he was merely asking. Thereupon accused went into his room came out and said there was nothing deceased could do to him. According to the witness accused again went into the room and came out very agitated and told deceased that deceased was a boy he could do nothing to him. Because of the exchange of heated words another man handed a slasher to deceased.

The witness was unable to say what the accused had done to her husband before the other man handed deceased a slasher. But she says deceased accepted the slasher but had become weak failing even to raise the slasher with which he was to struck the accused. Deceased fell down as he walked towards his room. He fell down and died, according to PW2.

The police were then summoned and the matter was reported to them. PW2 states that though drinking was taking place she and her live-in-liver were not partaking of the drinks. PW2 identified two slashers, one she said one of which belonged to her live-in-lover. It was her evidence that accused had used the blade of the

slasher in striking her. She told the court she had seen a knife which she however could not describe. She gave the accused no reason for the assault on her. She had only warned the accused to be careful not to tramp on the vomiting woman.

The witness was cross-examined by Mr. Twala at length. The cross-examination was basically aimed at asking PW2 the evidence she had given and almost to all the questions put she was answering in the affirmative.

Then there was also a considerable amount of peripheral matters put to the Crown witnesses. I need not mention these in writing the court record abounds with such examples. I subsequently drew Mr. Twala to my concern about the peripheral matters. Mr. Twala in a very unethical manner told me he would rather stop cross examining witnesses because according to him, I was interfering with his cross-examination. This was very unfortunate coming from counsel of Mr. Twala's position. Mr. Twala finally approached my secretary to discuss what occurred during trial. I informed my secretary that if Mr. Twala wished to see me, he should do so in the company of counsel for the Crown. This, he did not do but opted to write letters directed to me as a judge. Some of which bordered on very unethical grounds.

Towards this end counsel are enjoined to acquaint themselves with the code of conducts for legal practitioners.

Coming back to the evidence led at the trial. PW3 Raphael Ntantumba who resides in the same area as did deceased and accused and other witnesses. His evidence, on the main corroborated that of PW2. He added however besides the drinking there was also dancing taking place. He also differed from PW2 in that he stated accused had struck complainant on count 2 so that she actually cried. It was his evidence that he went out to admonished accused not to assault other man's wife. He corroborated PW2's evidence that accused used a slasher in the assault of PW2.

PW3 admitted that he was drunk and went to his room to sleep. As he was lying in bed he heard a further noise and again got up and went out. Apparently deceased had been stabbed by then as PW3 states he asked accused why he had stabbed the person. Accused did not respond to this question. PW3 saw the knife after it had been taken possession of by the police.

PW4 Evah Nhamba also gave evidence along more or less the same points as did PW2 and 3. PW4 told the court that she actually saw accused go into his room and fetched a knife. She saw deceased and accused fight before accused produced the knife and stabbed deceased.

PW5 3709 Elmon Nkonde was the investigating officer and after

warning the accused in terms of the Judges' Rules accused voluntarily handed to him the knife which was produced in court. That was the evidence for the Crown. The accused also gave evidence and admitted striking the deceased's wife with an open hand. In so far as count 1 that is murder he admitted that deceased died at his hands. He, however, stated he had no intention to kill. Accused states he produced the knife in order to defend himself as deceased was using a slasher in assaulting him. Under cross-examination by the Crown it emerged that the accused had not given Mr. Twala proper instructions. There is a lot of important issues which were never put to the Crown witnesses but only surfaced for the first time when accused gave his evidence in chief. After submissions by both counsel both counsel agreed that a case of murder has been proved. The court is indebted to the assistance of both counsel. The accused is found guilty on count one but the court finds that extenuating circumstances exist. The court finds accused guilty on count two.

### **JUDGMENT ON EXTENUATING CIRCUMSTANCES**

During mitigation, accused's counsel advanced the following factors:-

- 1) That accused is a first offender without any previous convictions and he is 35 years of age. Also, he is married with 5 minor children.
- 2) When accused committed this offence he was intoxicated and because of his state of sobriety he reacted irrationally.
- 3) Accused has been in custody for a long time and Mr. Twala says he believes that that has taught the accused a lesson - that crime does not pay. On the same note, he also asked the court to backdate the sentenced to the date of arrest.
- 4) And that accused's reactions on count one were preceded by provocation when he was labelled as a drunken dog.

It is unfortunate that accused's children and dependants will suffer because of accused's irrational behaviour and his incarceration. It is correct that a deterrent sentence should be imposed but this principle should not be pushed further because it may encourage other offenders to commit similar crimes.

On count 1 accused is sentenced to 10 years imprisonment

backdated to 31<sup>st</sup> October 1998. On count 2 accused is cautioned and discharged.

J.M. MATSEBULA  
Judge