



SWAZILAND HIGH COURT

REX

vs

MAGAGULA, JEREMIAH NKOSINATHI

Cri. Trial No. 46/2000

Coram

SAPIRE, CJ

For Crown
For Defence

Mr. Maseko
Mr. Vilakati

JUDGMENT (04/09/2001)

The accused is charged with the murder of Bonisiwe Maziya. She was, it is common course, stabbed by the accused on the 4th July, 1999 and she died as a result of a stab wound so inflicted.

The accused when the count of murder was put to him pleaded guilty of culpable homicide. This plea was not acceptable to the crown and I accordingly entered a plea of not guilty.

It is also clear that at one time the accused and the deceased were lovers. According to the accused that relationship still existed at the time when he fatally stabbed the deceased. This is contradicted by other witnesses including the deceased's father while there is one witness who may be ambivalent on this point. But for the purposes of this case it is not necessary to determine what the situation in fact was. There was an eyewitness to the stabbing, she being Phindile Sifundza and she has to a

certain extent corroborated by Buyisile Sithole.

On their evidence it is clear that the deceased was walking with relatives when the accused approached her and attacked her for no apparent reason whatsoever. The first independent witness actually saw the stabbing and saw the accused actually taking a knife from his pocket. While the accused admits that it was he who stabbed the deceased he says this occurred arising from an argument and a scuffle which took place. He says that at the time of the killing he and the deceased were still lovers. He never entertained a wish or intent to kill her. His evidence in short is that because she refused in an arrogant way to account for money which he had given her he slapped her as a result of which she grabbed him by his testicles which apparently put him in such pain that all he could think of doing was to extract a knife from his pocket and use it in what appears to be a vicious frenzy on the deceased.

He claims no recollection of what happened between the first and subsequent blows. He is unable to say when exactly the deceased released her grip on his testicles. This account is not convincing. It does not accord with what was seen by the independent witnesses. Neither of them mentioned in their evidence in chief of any attack other than the assault with a knife and no one witnessed the deceased seizing the accused by his testicles. I may say that his version was not put directly to any of the witnesses. What was asked was whether the witnesses saw anything that would have provoked the accused to act in the manner in which he did. The line of question was not a putting of facts to which the accused would testify. After this had taken place I did in fact question the propriety of proceeding to question the witness as to provocation when the facts on which such provocation is said to exist were not put. The explanation given for failure to put the accused's version by defence attorney even if accepted means that the matter can only be dealt with on the basis that these witnesses did not see anything of what the accused describes and no adverse inference is drawn from the fact that his version was not put.

The fact however remains that they did not see this and their description of the manner in which the assault took place excludes the version given by the accused. But even if that was so, even if one were to accept the accused version the fact remains that he was the aggressor. He was the first one to raise his hand and hit the deceased and if she did react by grabbing him by his testicles he could have freed himself without taking out a knife and stabbing her. His actions cannot be categorised as self defence nor can it be said that he merely exceeded the boundaries of reasonable reaction in the circumstances

It is not necessary for the crown in order to show intent to show a desire on the part of the accused to kill the deceased. The element of intent can be constituted by an actual intent to put an end to the life of the deceased. It is however not limited to this. If the accused employing a lethal weapon embarks upon a murderous attack on a victim he cannot be heard to say that he did not intend to kill the person, as is certainly a case where the accused proceeded with reckless abandon as to whether or not the death of the deceased will ensue. According to the evidence of the doctor there were 9 stab wounds on the upper chest of the deceased four of which could have proved lethal. In these circumstances the offence that has been committed by the accused is murder and not culpable homicide. I accordingly find him guilty of murder of the deceased Bonisiwe Maziya.

EXTENUATING CIRCUMSTANCES

I find that there are extenuating circumstances in this case. The extenuating circumstances arise from the existing or prior relationship between these two persons and the emotions which their problems seem to have given rise.

SENTENCE

You have been found guilty of murder. The victim was your one time lover and she is the mother of your child. There has been conflicting evidence as to whether the relationship was still intact and whether you were living together at the time you killed her. You have admitted the killing but maintained that you did not intend to cause the death. The reason for your vicious attack remains unclear. I have found that on the evidence there could subjectively speaking have been some compelling reasons for your acting as you did. Such a reason would constitute extenuation the prosecution has conceded. I cannot accept that your actions could be recognised as self defence in law. The finding of the existence of extenuation may be over generous. The crime you have committed remains a repulsive vicious assault on a defenceless woman. It is the ultimate in abuse, even on your account of what happened. In your favour I take in to consideration that you are a first offender. I take into consideration that you surrendered yourself to the authorities apparently realising the enormity of what you have done. You have a wife and children other than that born to the deceased. The fact that you have dependents cannot however detract from the long term of imprisonment that I must impose on you. Your sentence must be one that reflects the seriousness of the offence and the abhorrence in which this court and the public in general view offences of this nature.

You are sentenced to ten (10) years imprisonment. The commencement of service of the sentence is deemed to be the date of your arrest that is the 5th of July 1999.

SAPIRE, CJ

