



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Criminal case no. 23/2012

Rex

V

MXOLISI SHONGWE

Accused

Neutral citation: *Rex v Mxolisi Shongwe (23/2012)* 2012[SZHC] 188

Coram: OTA J.

Heard: 27th August 2012

Delivered: 4th September 2012

Summary: Attempted murder – Mens rea in the form of dolus eventualis: Principles thereof.

OTA J.

- [1] The Accused person Mxolisi Shongwe is charged with the crime of Attempted murder. The indictment alleged that the said Accused upon or about the 5th July, 2011 at or near Ndlembeni Area in the Hhohho Region, did unlawfully and with intent to kill, hake Sipiwe Dlamini with a bush knife and thereby committed the crime of Attempted murder.

- [2] When the Accused was arraigned before me on the 27th August 2012, he was reminded of this right to legal representation. He elected to conduct his own defence. Thereafter, the charge was put and explained to the Accused in Siswati. The Accused told the court that he understood the charge and that he was pleading guilty.

- [3] Learned crown counsel Ms Masuku informed the court that the crown was accepting the Accused's plea of guilty and would not be leading further evidence. She told the court that the parties had prepared and signed a statement of agreed facts, which the crown wished to tender in evidence

together with the medical report, of the medical examination conducted on the complainant.

[4] Thereafter, both the statement of agreed facts and medical report were read out and explained to the Accused in Siswati. The Accused confirmed that he understood and accepted the content of these documents and had no objection to their being admitted in evidence as exhibits.

[5] The statement of agreed facts and medical report were then admitted in evidence as exhibits A and B respectively.

[6] I'll now demonstrate the content of the statement of agreed facts, which is as follows:-

“STATEMENT OF AGREED FACTS

The accused is charged with the crime of ATTEMPTED MURDER. In that he unlawfully and with intent to kill one SIPHIWE DLAMINI with a bush knife and thereby commit the crime of ATTEMPTED MURDER.

This took place on the 5th July 2011 at Ndlembeni in the Hhohho District.

The Accused pleads guilty as charged and Crown accepts his plea.

- 1. It is agreed between the Crown and the accused that the following events took place on the 5th July 2011.***

On the 5th July 2011 the complainant (PW1) was walking with one Nqobile Mnisi and they were from a saw mill. When they had already crossed Mhlatane River they (PW1 and PW2) met the accused who is a boy friend to PW1 (complainant) and they both have two children in their relationship. The accused then asked to talk to the complainant (PW1) but she refused.

- 2. The accused told the complainant that he (accused) had talked to the brother of the complainant by the name of Mduduzi and had asked him***

(brother) to come to his (accused) homestead to talk about the problems between the accused and the complainant (PW1). The accused further asked the complainant to take the child to the accused's homestead and he further asked the complainant as to whether she (PW1) had told her family that she was no longer in love with him (accused).

3. The accused produced a bush knife from his trousers and hacked the complainant several times all over the body and as a result she lost her consciousness in the process. The hacking took place in the presence of Nqobile Mnisi (PW1).

4. Nqobile Mnisi (PW2) went to report the incident to Mduduzi Simanga Mavuso. Mduduzi then called the police and a taxi to take the complainant to Pigg's Peak Government Hospital where she was treated.

5. *In the hospital the complainant was attended to by PW4 Dr. A. Makengo who compiled a medical report. In the medical report the doctor states in details the nature of the injuries.*

6. *The accused was arrested on the 5th July 2011 by PW5 the police officer 4877 Christopher Magagula. The accused had been in custody since that date.*

7. *The accused specifically admits that:-*
 - (a) *He unlawfully and with intent to kill hacked the complainant;*
 - (b) *All the injuries shown in the medical report were inflicted by him alone and nobody else;*

8. *By consent the following items are submitted as part of Crown's evidence:*
 - (a) *Statement of agreed facts*
 - (b) *Medical report compiled by the doctor; and*
 - (c) *The bush knife.*

9. The accused states that he is remorseful about the incident”.

[7] Having carefully considered the statement of agreed facts, I find that it contains enough particulars of the offence committed, for the court to dispense with the necessity of further evidence in terms of section 238 of the Criminal Procedure and Evidence Act, as amended (CP&E). I say this because in the statement of agreed facts, the Accused agreed that on the day in question, he took out a bush knife from his trousers and hacked the complainant who was his lover and the mother of his two children. The Accused agreed that he hacked the complainant all over the body several times and as a result the complainant lost consciousness.

[8] The medical report shows proof beyond reasonable doubt of the injuries which the complainant sustained as a result of the hacking incident. The medical report demonstrates that the complainant was **“in severe pains, stressed and looks very weak and pale”**. Her clothing was soaked with blood. That she sustained **“multiples cut wounds secondary to assault injuries--- wounds noted were 1/ head (scalp) :xt 13 cm front parietal**

laceration with frontal bone fracture x= 12 cm long right temporal region laceration x 20 cm laceration from the right temporal frontal region to the right upper lip and above the nose with nasal bone fracture 2 % right elbow: #7cm laceration with cut of the olecrains bone and tendons :-30 left hand dorsal cut with digital fractures +tendons cuts, (4 fingers) :- little finger completely amputated”

- [9] I find therefore that the statement of agreed facts and medical report, constitute proof beyond reasonable doubt that the Accused committed the said offence. I say this because by using a bush knife to hack the complainant several times all over her body including her head, as shown in the medical report, to the extent that he inflicted on her the magnitude of injuries demonstrated in the medical report and she lost consciousness, the Accused foresaw that the injury he intended to inflict on the complainant could cause death but he was reckless whether or not death occurred. The Accused thus had mens rea in the form of dolus eventualis as demonstrated by the following decisions: **Henwood Thornton v Rex 1987 – 1995 SLK 271 at 273, Rex v Mbanjwa Gamedze 1987 – 1995 SLR 300 at 336, Rex v Dumsani Menzi Mkhathwa criminal case no. 499/11 (unreported)**

[10] In the light of the totality of the foregoing, I thus find that the crown has proved its case beyond reasonable doubt. The Accused is found guilty and accordingly convicted of the offence of Attempted murder as charged.

[11] **Judgment on sentence**

In mitigation, the Accused asked for leniency. He said he was drunk when he committed the said offence. That he left children at home who are now in the care of his grandmother who is also old and that he had no intention to commit the crime.

[12] For her part, Ms Masuku asked for a punitive sentence to act as a deterrent to other offenders, in view of the prevalence of this sort of offence against the female populace of the Kingdom.

[13] Mxolisi Shongwe, in passing sentence on you the law mandates me to consider your personal circumstances, the seriousness of the offence, the interest of the society and the peculiar facts and circumstances of the case. See **Chicco Manyanya Iddi and 2 others v Rex Criminal Appeal No.**

**03,09 and 10/2010, Mfanasibili Gule v The King Criminal Appeal Case
No. 2/2011.**

[14] Mxolisi Shongwe, I have thus taken cognizance of your personal circumstances demonstrated in your plea in mitigation which I have detailed ante. I pay particular heed to the fact that you are remorseful, a first offender and that you have pleaded guilty. You certainly have my sympathy.

[15] Having considered your personal situation, I however wish you to know that your offence is a very serious one. It is one which the courts have seen the need to deprecate in the strongest of terms in the recent past. The uncompromising mood of the courts against this offence is not farfetched. It is borne out of the prevalence of the unfortunate, reprehensible and unacceptable incidents of assaults occasioned with dangerous weapons by males in the Kingdom against their female lovers. We see it more and more in the courts, that in a desperate move to salvage their wounded male ego when faced with unrequited love from their hitherto lovers, that many males in the Kingdom employ very dangerous weapons to assault these females ending their lives in some of these cases. This, they also do over nonsensical

and frivolous squabbles on issues that amount to nothing more than a squabble over “a morsel of bread”. And this they do with impunity. Showing the weakness that has pervaded the male populace of the Kingdom. Defeating the age long notion from time immemorial, one that is as old as the Bible that “*the woman is the weaker sex and must be dealt with according to understanding by her male counterparts*”. It is this unsavory trend that has elicited the stiff stance of the courts against this offence.

[16] In casu, Mxolisi Shongwe, you employed a bush knife to hack complainant all over the body including a part as sensitive as the head and inflicted the magnitude of injuries demonstrated in the medical report on her. The magnitude of injuries was to the extent that the fingers of her left hand were fractured, the little finger was completely amputated, the nasal bone of her nose fractured and she lost consciousness. At the time of the assault complainant was not wielding any weapon and did not pose any threats to you. Your actions on the day in question were undoubtedly unacceptable and must be discouraged.

[17] It remains for me to point out that your allegation that you were drunk at the time you committed this offence will add little or no salt in mitigating this offence. As the Supreme Court stated in the case of **Mbuso Siphso Dlamini v Rex Appeal Case No. 34 (2010 at pages 8-9, per Ebrahim JA**

“----- His consideration of the dangers inherent in the voluntary and excessive consumption of alcohol should have been done before he took the first sip. The subjects of this Kingdom must not be made to suffer the loss of their lives because of persons such as the Appellant’s continuing abuse of alcohol, which is a painful and mind affecting stimulant and intoxicant. He who continues to abuse alcohol to such an extent that the control of his voluntary actions is impaired, and then commits serious crimes must face the full penal consequences of his conduct. Voluntary drunkenness as a mitigating factor in cases such as this, has lost it’s efficacy”

See **Rex v Nhlonipho Mpendulo Sithole criminal case no. 370/11** judgment of 10th August 2012.

[18] Mxolisi Shongwe, having therefore carefully considered the triad, I find a sentence of 7 years fitting of the offence committed to serve as a deterrent to others.

[19] This sentence is backdated to the 5th July 2011, the date of Accused's arrest and incarceration.

[20] It is so ordered. Right of appeal and review explained.

For the Crown:

N. Masuku

Accused in person

**DELIVERED IN OPEN COURT IN MBABANE ON THIS
THE DAY OF 2012**

**OTA J.
JUDGE OF THE HIGH COURT**

