



IN THE HIGH COURT OF SWAZILAND

Criminal case No: 344/2011

In the matter between:

REX

VS

COLANI BABILI DLAMINI

Neutral citation: *Rex v. Colani Babili Dlamini (344/2011) [2013] SZHC39 (2013)*

Coram:

M.C.B. MAPHALALA, J

For Crown

Principal Crown Counsel S. Fakudze

Accused in person

Summary

Criminal law – accused charged with attempted murder – plead guilty to the offence – convicted and sentenced to ten years imprisonment.

JUDGMENT
6th MARCH 2013

- [1] The accused was charged with attempted murder; and, the Crown alleged that on the 2nd July 2011 at Mlambo area in the Shiselweni region, the accused with the intention to kill unlawfully assaulted Esther Dlamini (born Myeni). He pleaded guilty to the charge.
- [2] A statement of Agreed Facts duly signed by the Crown Counsel and the accused was admitted in evidence in accordance with section 272 (1) of the Criminal Procedure and Evidence Act No. 67 of 1938. It was marked Exhibit 1; and, it constitutes a formal admission.
- [3] The statement of Agreed Facts provides the following:

**“FORMAL ADMISSIONS AND STATEMENT OF
AGREED FACTS**

- 1. Whereas the accused is indicted for the offence of Attempted Murder in that upon or about the 2nd July 2011 and or near Mlambo area in the Shiselweni region, the accused with the intent to kill, did unlawfully assault one Esther Dlamini.**
- 2. The accused upon being requested to plead entered a plea of guilty which the Crown accepted.**
- 3. The accused accepts that on the 2nd July 2011, he unlawfully and with intent to kill, assaulted Esther Dlamini, his uncle’s wife indiscriminately on the head with a bushknife.**

- 4. The accused accepts that he led the Police to the discovery of the bushknife he used in assaulting the complainant.**
- 5. The accused accepts that the complainant was gravely injured as a direct result of his unlawful act of hacking the complainant.**
- 6. And now it is agreed that the medical examination report relating to the injuries sustained by the complainant owing to her being assaulted with the bushknife by the accused be handed in by consent to form part of the evidence.**
- 7. The bushknife is also handed in by consent to form part of the evidence.**
- 8. The accused was arrested on the 6th July 2011 and has been in custody ever since.”**

[4] The Medical Report of the complainant was admitted and marked Exhibit 2. In terms of the report the complainant’s clothes were soaked in blood when she was being examined by the doctor; there were lacerations with torrential bleeding; and severe head injuries with a skull fracture.

[5] The bushknife used in the commission of the offence was also admitted in evidence and marked Exhibit A.

[6] Section 238 of the Criminal Procedure and Evidence Act provides the following:

“238. (1) if a person arraigned before any court upon any charge has pleaded guilty to such charge, or has pleaded guilty to having committed any offence (of which he might be found guilty on the indictment or summons) other than the offence with which he is charged, and the prosecutor has accepted such plea, the court may, if it is:

(a) The High Court or a principal magistrate’s court, and the accused has pleaded guilty to the any offence other than murder, sentence him for such offence without hearing any evidence...”

[7] The evidence adduced by the Crown does prove the commission of the offence beyond reasonable doubt. In cases of attempted murder *mens rea* in the form of *dolus eventualis* suffices. See the cases of *Rex v. Bongwa Mcondisi Dlamini* Criminal case No 102/2008 (HC) as well as *Henwood Thornton v. Rex* 1987 -1995 SLR 271 (CA) at 273. It is clear from the evidence that when the accused assaulted the complainant with a bushknife on the head, he appreciated the risk to life involved coupled with recklessness as to whether or not the risk is fulfilled in death. Accordingly, the accused is convicted of attempted murder.

[8] In mitigation the accused contended that his plea of guilty was a sign of remorse, that he was intoxicated at the time he committed the offence

having been drinking alcohol with his friends from early in the afternoon to the evening; it was month-end and he had been paid his wages at his place of work. He argued that he was a first offender, single with one child to support and that the complainant had provoked him by saying that he was the cause of a land dispute in the family. It is common cause that the complainant and the accused are relatives; the complainant is the wife of the accused's uncle.

[9] The accused is a labourer employed by a forest plantations company in Nhlangano. He was arrested on the 6th July 2011; he was granted bail of E15 000.00 (fifteen thousand emalangeni), and had to pay cash of E2 000.00 (two thousand emalangeni) and provide surety for E13 000.00 (thirteen thousand). However, he failed to secure the surety and still remains in custody.

[10] I have considered the triad, that is the personal circumstances of the accused, the seriousness of the offence as well as the interests of society. In the case of *Rex v. Muzi Dlamini* criminal case No. 126/2011 I had occasion to state that the range of sentences for attempted murder in this country ranges from three years to ten years depending on the seriousness of the injuries sustained by the complainant in addition to the personal circumstances of the accused and the interests of society.

[11] There is a sudden upsurge in this country with the use of bushknives, slashers as well as axes in the commission of serious and violent offences against innocent and law-abiding citizens. Many of these cases are committed against defenceless women. This court has a Constitutional duty to come to the assistance of members of the public who cannot defend themselves and impose appropriate sentences that will serve to curb this scourge.

[12] Accordingly the accused is sentenced to ten years imprisonment and the period spent in custody since the 6th July 2011 will be taken into account in computing the period of imprisonment.

M.C.B. MAPHALALA
JUDGE OF THE HIGH COURT