



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Criminal case no. 388/07

Rex

V

THULANI MAGAGULA

Accused

Neutral citation: *Rex Thulani Magagula (388/07) [2013]SZHC 45*

Coram: OTA J.

Heard: 12th February 2013

Delivered: 13th February 2013

Summary: Application in terms of section 165 (1) and (2) of the Criminal Procedure and Evidence Act 67/1938 (as amended): Accused charged with murder: Certified mentally ill as at the time of commission of the offence: Application granted

OTA J.

[1] The Accused person Thulani Magagula is charged with the crime of murder.

The indictment alleged the following:-

“In that upon or about 13th May, 2006 and at or near Bulandzeni area, in the Hhohho Region, the said accused person did unlawfully and intentionally kill Linah Nhlambase Magagula / Dlamini by stabbing her with a spear and did thereby commit the crime of murder”

[2] When the Accused was arraigned before me, the indictment was read and explained to him in Siswati the language of his choice. He pleaded guilty.

On the application of the Crown I entered a plea of not guilty in appreciation of the nature of the offence of murder charged.

[3] Learned Crown counsel Mr. Nxumalo moved an application at this juncture, wherein he prayed the court to invoke the provisions of section 165 of the Criminal Procedure and Evidence Act. His contention is that the Accused was insane at the time he committed the offence as certified by a medical report from the National Psychiatric Hospital.

[4] Learned defence Counsel Ms Mazibuko indicated to the court that the defence are not opposed to this application. To this end the crown urged a statement of agreed facts exhibit A signed and filed by the parties which states as follows:-

Statement of agreed facts

- 1. The accused is charged with the crime of MURDER in that upon or about 13th May 2006 and at or near Bulandzeni area in the Hhohho Region, the said accused did unlawfully and intentionally kill one LINAH NHLAMBASE MAGAGULA with a spear and did thereby commit the crime of MURDER.***
- 2. It is agreed between the Crown and the defence that the evidence shows that this matter can be properly dealt with under Section 165 (2) of the Criminal Procedure and Evidence Act of 1938***
- 3. It is also agreed that the following events took place on the 13th May 2006 when the crime was committed.***
 - 3.1 On the 13th May 2006 in the afternoon the accused came home accompanied by PW3 (Flora Ntombifuthi Dlamini) and one Xolile. PW3 gave the accused some food after she had learnt that he (accused) was behaving abnormal. After PW3 had given the accused the food she (PW3) went to do other***

home duties. While she (PW3) was still busy with her duties she received information that the accused wanted his father to pray for him.

3.2 Indeed the prayer was conducted and was attended by PW3 and the deceased. When the prayer was over the accused's father left and it was when the accused requested PW3 to read him (accused) the medical report (of accused). The medical report showed that the accused was HIV positive.

3.3 After the medical report was read PW3 and the deceased left the house but when they were about to exit the door the accused came with a spear and stabbed the deceased. PW3 ran away in fear of the accused and an alarm was raised and police arrived and arrested the accused. The body of the deceased was also taken by the police.

3.4 PW6 (3024 D/Sgt. Sibusiso Dlamini) is the one who arrested the accused on the same day (13th May 2006). The accused was taken to the psychiatric centre for medication and has been receiving medication since then.

3.5 A psychiatric report had been compiled and the report shows that the accused is now fit to stand trial.

- 3.6 *PW1 Dr. Komma Reddy examined the body of the deceased to ascertain the cause of death. He opined that the cause of death was due to “multiple stab wounds to the chest”*
4. *It is further agreed that the accused specifically admits the following:-*
- 4.1 *The accused acted unlawfully in the circumstances;*
- 4.2 *The accused caused the death of the deceased as there was no novus actus interveniens between his action and the death of the deceased;*
- 4.3 *The accused admits that he was insane when he committed the offence;*
- 4.4 *He was never provoked by the deceased when he (accused) killed her.*
5. *It is further agreed that the following will be handed in as exhibits to form part of the evidence of the Crown*
- (i) *Statement of agreed facts;*
- (ii) *The post mortem report compiled by Dr. Komma Reddy.*
- (iii) *The Psychiatric Report.*

[5] The Crown indeed tendered in evidence the medical report of the Accused person exhibit B as well as the post mortem report of the deceased exhibit C.

[6] Now, section 165 (1) and (2) of the Criminal Procedure and Evidence Act upon which the crown predicates this application states as follows:-

“165 (1) *If an act either of commission or omission is charged against any person as an offence and it is given in evidence on the trial of such person for such offence that he was insane so as not to be responsible according to law for his act at the time when it was done, and if it appears to the court before which such a person is tried that he did the act but was insane as aforesaid at the time when he did it, the court shall return a special finding to the effect that the accused did the act charged, but was insane when he did it.*

(2) *If a special finding is returned the court shall report to the Attorney General for the information of His Majesty and shall meanwhile order the accused to be kept in custody as a criminal lunatic in such place and in such manner as it directs”.*

- [7] It follows from the above that for the Crown to be availed of this application, they must demonstrate that the accused committed the offence but was insane at the time he committed it.
- [8] In the statement of agreed facts detailed above, the Accused agrees that he committed the offence and that he was insane when he committed it.
- [9] To drive the fact of Accused's insanity home, the Crown tendered exhibit B, the Psychiatric Report of the Accused, dated 18th July prepared by Dr Iheanyi Fehiobuche a Psychiatrist at the National Psychiatric Hospital. In exhibit B the good doctor states as follows:-

“RE: PSYCHIATRIC REPORT FOR THULANI ADAM MAGAGULA

At your request, I conducted a psychiatric evaluation of the above named person former patient of this hospital.

I have also sighted his medical and psychiatric records which show that he was suffering from mental illness at the time of commitment of alleged offences.

He is now stabilized on psychiatric medication and therefore considered fit to stand trial”

[10] In the face of the statement of agreed facts and the psychiatric report, I come to the inexorable conclusion that the application by the Crown in terms of section 165 (1) and (2) of the Criminal Procedure and Evidence Act, has merits in the circumstances.

[11] It is on these premises that I order as follows:-

“That the Accused Thulani Magagula is to be kept in custody as a criminal lunatic at the Criminal Lunatic Assylum pending direction from the Attorney General”

For the Crown:

DM Nxumalo

For the Accused:

N Mazibuko

**DELIVERED IN OPEN COURT IN MBABANE ON THIS
THE DAY OF 2013**

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