



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Criminal case no. 197/02

Rex

V

DAVID DLAMINI

Accused

Neutral citation: *Rex David Dlamini (197/02) [2013] SZHC46*

Coram: OTA J.

Heard: 13th February 2013

Delivered: 13th February 2013

Summary: Accused was insane at the time of commission of the offence of murder charged: application by the Crown for his committal to the Criminal Lunatic Assylum pending direction from the Attorney General pursuant to section 165 (1) and (2) of the Criminal Procedure and Evidence Act 67/1938 (as amended), granted.

OTA J.

[1] The Accused person David Dlamini is charged with murder. It being alleged that on or about the 19th of December 1998 at or near Siteki area, Lubombo Region, the said accused person did unlawfully and intentionally kill Simokoma Gamedze.

[2] When the accused appeared before me today the charge was read and explained to him in Siswati. The Accused indicated that he was pleading guilty but that he was mentally ill when he committed the offence. Learned defence Counsel Ms Mazibuko confirmed this plea. I however entered a plea of not guilty in the circumstances. Learned Crown counsel Ms Masuku, at this juncture, moved an application in terms of section 165 of the Criminal Procedure and Evidence Act 67/1938 (as amended) for the Accused to be treated as a criminal lunatic premised on the grounds that he was insane at the time he committed the offence. Learned defence Counsel Ms Mazibuko for her part intimated to the court that the defence are not opposed to this application.

[3] To demonstrate that the parties are *ad idem* on this issue and to buttress their reliance on section 165 of the Criminal Procedure and Evidence Act, Crown Counsel urged a statement of agreed facts, exhibit A, signed and filed by the parties which reads as follows:-

“Statement of agreed facts

1. ***The accused is charged with the crime of MURDER in that upon or about the 19th December 1998 and at or near Siteki area in the Lubombo Region, the said accused did unlawfully and intentionally kill one SIMOKOMO GAMEDZE***
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 67 of 1938.***
3. ***It is also agreed that the following events took place on the 19th December 1998 when the crime was committed.***
 - 3.1 ***On the 19th December 1998 PW1 (John Mfana Mdluli) was at his shebeen selling home brewed liquor. Accused and deceased were among the people who were present at the shebeen.***

3.2 *PW1 observed accused who was known to be mentally unstable, provoking the deceased. Deceased reported the matter to PW1. PW1 advised deceased that accused was of an unsound mind. Deceased collected his stick and some stones and placed them next to himself.*

3.3 *Accused persisted in harassing deceased to which deceased reacted by throwing a stone to accused who tried to avoid it but hit him on his head.*

3.4 *At that juncture accused advanced towards deceased, a knife was already in his hands and stabbed deceased on his left chest. Deceased died on the scene.*

3.5 *Police were called and they came and arrested accused person. The body of the deceased was also taken by the police.*

3.6 *PW5 (2898 Constable William Simelane) is the one who arrested the accused. The accused was taken to the psychiatric centre for medication and has been receiving medication ever since.*

3.7 *A psychiatric report had been compiled and the report shows that the accused was of unsound mind at the time of*

the commission of the offence and is now fit to stand trial. Same are contained in psychiatric reports dated the 22nd September 2000 and 15th March 2010 respectively.

3.8 PW4 Doctor R.M. Reddy examined the body of the deceased to ascertain the cause of death. He opined that the cause of death was due to “hemorrhage as a result of penetrating injury to left lung”

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 him.

5. It is 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. R.M. Reddy;

(iii) The psychiatric report.”

[4] Crown Counsel also urged two psychiatric reports exhibits C and C1 respectively, as well as the post mortem report of the deceased, exhibit B.

[5] Now section 165 (1) and (2) of the Criminal Procedure and Evidence Act says this:-

“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.

[6] In satisfaction of the rigours of the above legislation, the facts detailed in the statement of agreed facts demonstrate an unprovoked attack by the Accused on the deceased leading to his death. The Accused also admits this fact and the fact that he was insane at the time of the commission of the offence.

[7] More to the foregoing, is the content of the psychiatric reports from the National Psychiatric Hospital on the state of the Accused's mental health. Of utmost importance in these proceedings is the psychiatric report dated the 22nd of September 2000, (exhibits C) signed by Dr R Ndlangamandla a Psychiatrist, attached to the National Psychiatric Hospital. In that report the doctor states as follows:-

“RE: PSYCHIATRIC ASSESSMENT OF DAVID DLAMINI

The above named is an adult male. He is a known psychiatric patient since 1984 . He has had several admissions into the Mental Hospital.

He suffers from a chronic mental disorder, which takes the relapsing course. This implies that even at the time of commission of the crime he was suffering from a disease of mind.

Currently on mental status evaluation he is out of touch with reality. He lacks full insight into his current situation. He talks nonsense and responds inappropriately to questions. He is irrelevant and incoherent at time.

He is not fit to stand trial but needs care, control and treatment in an appropriate place, as he is still a danger to society”

[8] The foregoing report was followed up by another psychiatric report of the same Accused person, (exhibit C1) dated 15 March 2010 under the hand of Dr Walter Mangezi also attached to The National Psychiatric Hospital. In this subsequent report, the doctor attests that the Accused is mentally stabilized on medication and is fit to stand trial.

[9] The only conclusion I can reach from the totality of the evidence urged upon this court, is that the Accused committed the offence of murder charged but was insane at the time he committed it. I hereby make a special finding to that effect.

[10] This state of affairs brings this case squarely within the purview of section 165 (1) and (2) of the Criminal Procedure and Evidence Act.

[11] In the circumstances I order as follows:-

“That the Accused David Dlamini is to be kept in custody as a Criminal Lunatic at the Criminal Lunatic Assylum pending direction from the Attorney General”

For the Crown:

N. Masuku

For the Accused:

N. Mazibuko

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

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

