



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

HELD AT MBABANE

CRIM. CASE NO. 32/12

In the matter between:

REX

v

MLUNGISI SEBENELE ZWANE

Neutral citation: Rex v Mlungisi Sebenele Zwane (32/12) [2014] SZHC 174 (30 JULY 2014)

Coram: Q.M. MABUZA J

Heard: 21/7/2014

Delivered: 30/7/2014

Summary: Criminal Law – Accused charged with attempted murder – Pleads guilty to charge – Convicted of attempted murder – Sentenced to 7 years imprisonment; 2 years suspended for 1 year – Sentence backdated to date of arrest.

JUDGMENT

MABUZA –J

- [1] The Accused was indicted with attempted murder in that on or about the 20th November 2011 at or near Nkiliji area in the Manzini region, the Accused acting unlawfully and with intent to kill did stab Dumisa Mnisi with a short spear and did thereby commit the crime of attempted murder.
- [2] When the charge was put to the Accused he initially pleaded not guilty but after the Crown had led two witnesses namely the doctor and the complainant, he changed his plea to that of guilty to the charge.
- [3] The Crown accepted his plea and a statement of agreed facts was drawn up which was signed by him and Miss Masuku for Crown. It was read into the record thereafter he agreed to the contents.
- [4] The story as contained in the statement of agreed facts is that on the 20th November 2011 the Accused was at the home of Make Makhubu where he was drinking traditional brew. He had been drinking since 10:00 a.m. The complainant Dumisa Mnisi arrived at around 1100 a.m. and also drank traditional brew.

- [5] While they were drinking the complainant invited the Accused to his homestead where there was a ceremony for his sister. The Accused replied that he could not accept the invitation as he was herding cattle as the herd boy had taken an off-day. He agreed to go to the complainant's home at about 1700 hours after he had taken the cattle home where his nephew would take care of them.
- [6] Indeed he took the cattle from the main grazing lands to the grazing lands that were near his home. He noticed that one of Make Makhubu's cows was missing as he also took care of her cattle. He went back to the grazing land to look for it but could not find it. He came back and informed her that he could not find it. He undertook to look for it at the dipping tank on the following day.
- [7] Make Makhubu responded that he had lost her cow because all he did was to sit and drink alcohol. The Accused says that he reacted to her accusation by insulting her by calling her by her private parts and also calling her a widow. Thereafter she said that she would go and look for her cow herself. The Accused went to a Gumedze homestead where he stayed for a while.
- [8] After sometime he returned to Make Makhubu's homestead where he found the complainant. The complainant asked him why he had insulted Make

Makhubu whereupon he slapped the Accused on the face. The Accused ran away and went into a field where he knew that there was a spear head. He took the spear head and returned to the complainant whom he stabbed several times.

[9] The Accused ran away after stabbing the complainant and went to a place called Malakatsa which is in the Manzini region where he stayed at a friend's place. He remained there for five days because he was afraid that he had committed an offence.

[10] After five days he called his mother who informed him that the police were looking for him for having injured the complainant. His father also called him back home so that they could talk. He went home and requested his father to accompany him to the Manzini police where he surrendered himself. He was arrested and charged for the attempted murder of the complainant.

[11] The Accused says that he is remorseful for stabbing the complainant. He says that he had no intention of committing the crime and that it was a mistake on his part which was caused by his drunkenness. The complainant was also drunk.

- [12] He conceded that he negligently caused the injuries inflicted on the complainant.
- [13] The medical report (Exhibit A) and the spear head (Exhibit 1) were handed in as exhibits by consent.
- [14] The Accused was convicted upon his plea of guilt substantiated by the agreed facts. A statement of agreed facts was filed by consent and marked Exhibit "B".
- [15] The Crown conceded that the Accused was a first offender. In mitigation the Accused said that he was currently 28 years old. That he attended school up to Standard 3 and had no money to pursue his education further. He had no wife and children. He herds cattle for a living and also ekes a living from ploughing fields at home. He was arrested on the 30th November 2011 and has been in custody since then. He pleaded for leniency more so that both he and the complainant were drunk. He surrendered himself to the police.
- [16] I shall take into account all the above mitigating factors. When the complainant gave evidence he confirmed that he and the Accused were friends before this incident as they were from the same community. He also confirmed that the incident of him slapping the Accused and the subsequent stabbing was because they had been drinking.

[17] PW1, the doctor testified that the complainant had cuts at the back of his head and right side of his neck and on the chest. He also had a deep stab wound on the left of the chest. All the wounds were stitched. The complainant was taken for an X-ray and this showed that he had a blood clot because he was bleeding internally. A tube was inserted in order to drain the blood. And because of this the complainant had to be admitted for a week. After that he was discharged and advised to return within a week whereupon he was examined and found to have fully recovered. The doctor confirmed that the injuries were consistent with a sharp weapon such as a knife or spear. I shall take the evidence of PW1 into account when passing sentence.

[18] The Accused requested that his sentence be backdated to date of his arrest. I advised him that backdating his sentence was a constitutional imperative. Section 16 (9) of the Constitution provides that:

“Where a person is convicted and sentenced to a term of imprisonment for an offence, any period that person has spent in lawful custody in respect of that offence before the completion of the trial of that person shall be taken into account in imposing the term of imprisonment”.

[19] Having weighed all the circumstances above the Accused is sentenced to seven (7) years imprisonment without an option of a fine, two years of

which are suspended for two years on condition that he is not convicted of any offence of which assault is an element. The sentence is backdated to the 30th November 2011 on which date he was arrested and taken into lawful custody. Rights of review and appeal explained to the Accused.

Q.M. MABUZA -J

JUDGE OF THE HIGH COURT

For the Crown : Miss N. Masuku

For the Accused : In person