

IN THE HIGH COURT OF SWAZILAND

JUDGMENT

HELD AT MBABANE Case No.174/14

In the matter between:

REX

Versus

NKOSINATHI MKHATSHWA

Neutral Citation: ***Rex v. Nkosinathi Mkhathshwa 9174/14)***
[2019] SZHC 177(17th September 2014)

Coram : Magagula J

Dates Heard : 11-12 September 2019

Date Delivered : 17th September 2019

Summary: ***Criminal law and procedure - Accused person charged with attempted murder - pleads guilty to the charge - statement of agreed facts prepared and handed duly into court - determination of mens rea - sentencing.***

[1] The accused person is charged with the offence of attempted murder and the crown informs the court that:

“Upon or about the 30th January 2014 and at or near Maguga area in the Hhohho Region, the said accused did unlawfully and with intent to kill stab one THABO NELSON GADLELA with a knife and did thereby commit the crime of ATTEMPTED MURDER.”

[2] Upon arraignment the accused pleaded guilty to the charge. The Crown accepted his plea and a statement of agreed facts was prepared and signed by both the accused person and the public prosecutor. The accused confirmed that it was a true record of what they had agreed to with the prosecutor. The statement was recorded as follows:

“STATEMENT OF AGREED FACTS

Nkosinathi Mkhathshwa (hereinafter referred to as the accused) stands charged with the offence of Attempted Murder. He has pleaded guilty to the charge, which plea the Crown accepts.

It is agreed as follows between the Crown and the Accused:

1. On the 30th January 2014 the accused was enjoying some drinks with Colani Mphila, Simanga Gamedze, Bruga Dlamini and Ntokozo Malambe at a Hlatshwako homestead where the complainant (Thabo Nelson Gadlela) was also present.

2. The accused then had a quarrel with his step father

(Simanga Gamedze) whereupon the complainant and the others present tried to intervene. Shortly thereafter, the accused left and later came with a knobkerrie and tried to threaten those present with it.

3. After this encounter the accused went into one of the houses at the homestead and came back after about fifteen (15) minutes, this time he came with a knife and stabbed the complainant at the back left side and ran away. The complainant was rushed to Raleigh Fiktin Memorial (R.F.M) hospital where he was attended by Dr Tsilumba (Pw4) and was admitted for seven (7) days.

4. On the same day, the 30th January 2014 after the stabbing incident the accused proceeded to Maguga Clinic where he approached his friend one Bonkhe Alex Magagula (Pw3) and told him that he had stabbed the complainant and further surrendered the knife used during the stabbing to Bonkhe Alex Magagula (Pw3) who later handed it to the police.

5. The accused person was arrested on the 9th February 2014 and was released on bail on a later date.

6. The accused person admits that the complainant was injured on the back left side due to his intentional and unlawful conduct and he foresaw that his conduct could result in the death of the complainant.

7. The accused is remorseful for his actions.

8. It is further agreed that the following he handed in by consent to form part of the Crown's evidence.

(a) Medical Report.

(b) Statement of Agreed Facts

(c) Knife.”

The statement of agreed facts is marked exhibit “A”

[3] The Medical report was thereafter read into the record and the original thereof handed into court. It is marked exhibit “**B**”
The knife used in the commission of the offence was handed into court by consent and it is marked exhibit “P1”.

[4] From the statement of agreed facts I am satisfied that the accused person inflicted the injury depicted and stated by Dr N. Tsilumba in his medical report which was handed in by consent. **Actus reus** has therefore been proved beyond

reasonable doubt. I now turn to consider the element of intention. The legal authorities reveal that in attempted murder cases intention to kill can be inferred from the conduct of the accused person.

[5] In the South African case of R.V HUESBCH 1953 (2) SA 561 at 567 it was stated:

“ In order to support a conviction for attempted murder there need not be a purpose to kill proven as an actual fact. It is sufficient if there is an appreciation that there is some risk to life involved in the action contemplated coupled with recklessness as to whether or not the risk is fulfilled in death.”

[6] Again in the case of Rex v. Mndzebele 1970 - 1976 SLR 198 at 199 (F) Nathan J stated:

“ In order to support a conviction for attempted murder there need not be a purpose to kill proven as an actual fact. It is sufficient if there is an appreciation that there is some risk to life involved in the action contemplated coupled with recklessness as to whether or not the risk is fulfilled in death.”

[7] As shown in paragraph 6 of the statement of agreed facts, the accused

admits that. ***“he foresaw that his conduct could result in the death of the complainant.”*** Besides such admission by the accused, it can be inferred that when he stabbed the complainant with the big knife which was

handed into court and at the centre of his body's back left side, he could not have intended anything but to kill the complainant. At the very least he appreciated that such stabbing could kill the complainant. It is the finding of this court therefore that the accused had the necessary intention to kill the complainant.

[8] From the foregoing I am satisfied that both the elements of ***actus reus*** and ***mens rea*** have been satisfied. The following verdict is accordingly returned by the court.

8.1 The accused person is guilty of attempted murder as charged and as per his plea.

8.2 The bail granted to the accused person is hereby cancelled and he is to be kept in a correctional facility pending sentencing.

SENTENCE

[9] In sentencing the accused I take it into account the nature and seriousness of the offence, the interests of society and the circumstances of the accused person. I also take into account the trend in sentencing for such offences in our jurisdiction.

[10] An attempt on another person's life is a very serious offence and our society views such as a very serious light. A knife is lethal weapon and when it is used to assault another person such incident sends shock waves upon those who witness it or come to know of such assault. When it is used to stab a person on the upper part of the body as in this case it often leads to death. The complainant is very lucky to be alive. The accused just wanted him dead. The accused person ought to receive a sentence of imprisonment commensurate with his evil deeds.

[11] I also note that violent offences of this nature are now highly prevalent in our society and in most cases they lead to losses of lives. It is clear therefore that the sentences imposed by the courts for such offences no longer have any deterrent effect. It is the duty of the courts to protect society against such violent acts by ensuring that the sentences imposed upon offenders have a deterrent effect. A person contemplating to commit an act of this kind must know that he will face the full might of the law.

[12] The court was referred to the case of REX V. THABISO SURPRISE DLAMINI (Case No: 114/16) where Mabuza J stated *inter alia*:

“ Stabbings are a primary cause of bodily harm and murders. The courts take a serious view of such violence and so does society. The society expects the

courts to be vigilant and proactive when crimes of this nature occur and the sentences should deter would be offenders.”

I fully align myself with the observations of Mabuza J in this regard.


[13] I however note and take into account that the offence was committed during a drinking spree. This somewhat reduces the moral blameworthiness of the accused. I further note that the accused is a young person ofyears and at the time he committed the offence he wasyears. This shows that he was immature which is another factor that reduces his moral blameworthiness. I further note that the accused has pleaded guilty to the offence which is a sign of being remorseful for what he did.

[14] The trend is sentencing for the crime of attempted murder in our jurisdiction is from three (3) years for less serious offences to ten (10) years for the most serious offences. In my view the accused committed a serious offence of attempted murder. He stabbed the complainant with a very big knife which could have killed him. The complainant was admitted in hospital for seven (7) days. The complainant had not provoked the accused. His only sin was to try and broke peace when the accused took up a quarrel with his step father.

[15] Having taken into account all the above factors, the court sentences the accused as follows:

15.1 The accused is sentenced to five (5) years imprisonment without the option of a fine.

[16] Should the accused be unsatisfied with this judgment or any portion thereof, he is hereby advised that he is at liberty to appeal this judgment within 30 days from date hereof.



J.S MAGAGULA J

For the Crown : P.N Dlamini

For Accused : In person