

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

Criminal Case No. 96/2014

In the matter between

Rex

V

Thulani Gudlumuzi Matsabatsa

Neutral citation: *Rex v Thulani Gudlumuzi Matsabatsa (96/14)SZHC - 39 [2019]*
(9th March 2020).

Coram :Tshabalala J

Heard : 04 June 2018

Delivered : 09 March 2020

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*Sunary: Criminal law: Intention to kill- The accused killed his stepmother in a
grui : „some attack with a spear, during a domestic squabble over a missing beast that
,
deceased's grandson failed to fetch from grazing lands. He pleaded not guilty to
murder and common assault in counts one and two, respectively. In his undisputed
judicial statement, he told the magistrate that he decided to kill the deceased
because he feared that she would kill him.*

Self defence: Defense counsel argued that the accused killed in self defence, fueled by a rumor that the deceased killed his brother, and therefore was guilty of culpable homicide.

Held that that the crown has proved intention to murder and murder, that here was no legal basis for self-defense.

JUDGEMENT

[1] The accused pleaded not guilty to two charges of murder in count 1, and common assault in count 2. He is alleged to have unlawfully and intentionally killed his step mother, Khombisile Mlotsa, by stabbing her with a spear. The offence is alleged to have been committed on or about the 15th February 2014, at Luhlokohla village, Ngculwini area in Manzini region. Count 2 relates to allegation that on the same date and place he unlawfully and intentionally assaulted Zachariah Dlamini by throwing and hitting him with a stone. The crown parades 5 witnesses for its case.

THE CROWN CASE

[2] PW1 4875 *DIC* Zakhele Kunene, a Scenes of Crimes Officer for 10 years, was stationed at Mafutseni police station in 2014 when the incident happened. He testified that on the 15th February 2014 at around 9.30pm he attended a murder crime scene at Luhlokohla area at the homestead of Matsabatsa where he made the following observations: the body of the deceased with multiple stab wounds lying on the ground; a spearhead and a spear

handle a few meters from the body. Another spear was on the doorstep. The victim's house door and window were broken.

[3] PW 1 took pictures of the entire crime scene. He handed in a picture album¹ that he prepared, under cover of a memo dated 1st June 2018. Photo no. 7 shows a bent spear head while photo no. 8 is that of a broken spear handle. Pictures 9 - 10 show planks from a broken door of the deceased's house; photo 12 shows broken door with missing plank panels. Photo no. 1 depicts the position in which PW1 found deceased's body on his arrival.

[4] PW 2, Lindokuhle Sandile Shongwe, 22 years of age, testified that he was the grandson of the deceased. He lived with the deceased during her lifetime at the Matsabatsa homestead. He witnessed the confrontation between the deceased and the accused that led to the fatal attack. PW2 had known the accused for 3 months since December 2013 when the accused came to live at his grand-parent's home. The accused had his own house within the Matsabatsa's homestead. The witness gave a brief background that led to the misunderstanding that erupted between the accused and the deceased on the 15 February 2014, culminating in accused's attack of the deceased.

[5] On the material day the deceased interrupted the accused who was quizzing PW2 about his failure to fetch or locate one of the family cattle from the grazing land. The deceased who came out from the kitchen inquired from the witness what the accused was saying to him and he gave her the answer. According to PW2, the accused addressed the

¹ Collectively Exhibit A.

deceased disrespectfully and said that she was supposed to be cooking at home.² Exchange of words ensued between the deceased and the accused, the latter hurling insults at the deceased.

[6] While PW2 was in his sleeping hut the accused came and verbally abused him accusing him of minor infractions, leading to the witness quitting and running out of his sleeping room. PW2 got protection from the deceased who invited him to her house and closed the door behind them.

7] What followed was that the accused came and stoned the deceased's house and broke windows. The deceased asked PW2 to phone police, but the line could not go through. PW2 left deceased's house and went to seek help from neighbors where he was able to call the Jolice. On his return home PW2 found that the deceased had been killed. Her body with stab wounds lay next to the doorstep of PW2's sleeping room. He saw spears on deceased's doorstep, one spear-head was detached from its wooden handle while another spear was intact. PW2 also observed broken door panels from deceased's house. The accused was nowhere in sight.

[8] PW3 Nkosinathi Velaphi Masangane was a resident of Mahlokohla at Ngculwini. On the night of the incident³ he was visiting an acquaintance, one Mlungisi who resided at the ..1atsabatsa homestead. They sat together with others including Andile Malaza and Sibusiso ..1atsabatsa. PW3 witnessed, first the conversation between the accused and his nephew⁴

²PW2 had told the accused that he failed to fetch the cattle because he had been cooking for his grandfather.

³February 15 2014.

⁴PW2.

concerning cattle that PW2 failed to bring from the grazing land. He subsequently saw the accused throwing stones at deceased's house, smashing windows.

[9] Quizzed by defence counsel on how he was able to identify the accused in the dark, as the one who threw stones, PW3 said that there was an electric light on in two houses and the main house as well as outside. He said there was a lamp on the wall above the smashed window. Further that the Accused threw the stones standing on the lit-up area. PW3 heard a female voice calling for help coming from inside the house that was pelted with stones. It is PW_ 's evidence that a woman was wailing inside the stoned house. PW2 raised alarm and went to seek help from neighbors. One neighbor, Zacharia Dlamini came out and went to the ,cene with PW2. They were joined at the gate by Maphuzukuvela, the elder son of Matsabatsa⁵.

[10] The accused approached them from behind carrying a spear. He threw stones at PW3 and others, one of which hit Zacharia Dlamini on the hip. They fled and jumped over the fence into he field, from where PW3 monitored accused's movements. He saw the accused enter the deceased's house where the deceased had earlier been calling for help. The accused then existed the house and went into the fields and that was the last he saw of the him. PW3 went >ack to Matsabatsa homestead where he saw the deceased lying naked with a spear stuck in her body. Part of the spear handle was broken away.

[11] PW4, Court interpreter Mbuso Dlamini from Manzini Magistrates court, testified in relation to a judicial statement made by the accused before Magistrate Joe Gumedze on the 17

⁵Deceased's husband.

February 2014. He interpreted during the recording of the statement. The uncontested statement was handed in by consent as Exhibit "B".

[12] PW5 Zacharia Sikelela Dlamini, a resident Luhlokohla testified that on the night in question PW3, Nkosinathi Masangane came to his house raising an alarm that the accused was attacking the deceased in her house. In response he went with PW3 to the Matsabatsa homestead where he found laMlotsa⁶ lying on the ground and appeared to be dead. While PW5 was still in shock the accused came out from deceased's house, picked up stones and threw them at PW5 and PW3, hitting PW5 on the waist. PW5 fled and phoned community police who subsequently arrived together with members of the community.

[13] With the help from electric light around the scene PWS was able to see the stone thrown by the accused that hit him. It had landed next to a rondavel where the deceased's body lay. PW5 identified the stone displayed in court with estimated weight of 600g.

[14] PW6 5737 Constable Valelisa Dlamini of Mafutseni police station CID was the principal investigating officer in the matter. He was called from home at 23:00 hours on the 1." ebruary 2014, in connection with this case. The accused was still at large.

[15] The accused was apprehended around midnight and detained at Mafutseni police station. The following day, PW6 together with Constable Kunene introduced themselves to the accused, cautioned him in terms of judges rules that he was not obliged to say anything or to take the police anywhere or to show them anything or hand anything related to the offence. That whatever he said, shared or wherever he

⁶ Deceased.

took the police the information would be used in court as part of the evidence against him. PW6 noted blood on accused's clothing and advised him that his clothes would be taken for forensic examination.

[16] The accused led PW6 and Constable Kunene to Matsabatsa homestead where PW6 made the following observations at the scene: one-room house belonging to the deceased had a smashed door and windows; one broken spear handle and a bent spear head; three wooden door panels; a spear with handle; planks and spear on the steps to deceased's house; and a short, bent spear head. He collected all the items and kept them at the police station as exhibits, including a stone that was collected from next to a house.

[17] PW6 referred to the items in court and handed them in as exhibits, except for the bent spear that he said he failed to locate at the exhibit room. The items were labelled thus: complete spear (Exhibit "1")⁷ three plank panels (Exhibit "2") collectively.⁸ Handed in were also a yellow T-shirt labeled (Exhibit "5"), blue overall jacket, (Exhibit "3"), 1pair blue pants, (Exhibit "4"), pair of black grasshopper shoes (Exhibit "6") and a stone (Exhibit "7"). PW6 subsequently charged the accused with murder and common assault of the deceased and Zacharia Dlamini, respectively.

[18] The crown submitted in evidence with the consent of the defence a confession statement (Exhibit "B") made by the accused before Manzini magistrate on the 17 February 2014, two days after the killing of deceased and arrest of the accused. In

⁷ The witness found on the steps to deceased's doo.

⁸ Parts of deceased's vandalized door.

the statement the accused laid bare the animosity between him and the deceased. The accused told the magistrate that he was told information about the deceased which made him believe that she would kill him. He said that he made a decision on the day in question to stab her to death to make sure she would no longer be a threat to his life.

DEFENCE CASE

[19] The accused told the court in his defence that he was 39 years old, he received education up to standard 4. He denied assaulting Zacharia Dlamini with a stone. He denied knowledge of the stone exhibited in court, stating that he never had a quarrel with Zacharia.

[20] The deceased was his step mother. She was previously married to his late uncle and subsequently taken as a wife by accused's father when his uncle passed away. They had a bad relationship with the deceased who he said he did not treat him well as a step mother. The accused gave examples of incidents when the deceased ill-treated him. On one occasion he was conversing with his father about goats that the accused said were supposed to be returned home. Deceased interjected and suggested that the accused was actually talking about her or referring to her in their conversation with his father. This led to an argument between the accused and the deceased. During the year 2014 on dates he could not recall, the deceased would remind him that his biological mother was in Shiselweni and that he should desist from referring to her as mother. She told him that she didn't want to cook for him. During January 2014 she told the accused that if his father considered making him *inkhosana* (an heir, senior son who takes over household when the father dies) that would not happen.

[21] Around February 2014 when he returned from work he found that he had been dished food, contrary to family practice of everyone dishing themselves. He became suspicious of the food and decided to give it to the family cats. Two cats that ate the food died. He expressed his desire to PW2 to take the last cat that died to the vet to ascertain the cause of death. PW2 later told him that the deceased ordered him to dispose of the cat's body in the toilet like the previous one. PW2 also mentioned that the deceased rubbished the plan to take the dead cat to the vet as crazy. The accused testified that the death of the cats that followed after eating food that was dished for him fueled his poisoning suspicions that someone wanted to poison hi·

[22] The accused said as a result of the deaths of the cats and his poisoning suspicions he stopped eating from the family kitchen and started cooking his own food in his house. The other reason for fearing for his life and opting to cook his own food was that the deceased made threatening utterances to the effect that the impossible will happen (*ematolo angeke ehlule lilanga*) which he understood to mean that his life was in danger.

[231] The accused stated that in one incident in 2014 he was sitting at home with his father who had returned from work. He got into a scuffle with the deceased. His father drew him away and thereafter warned him that his brother died and that if he continued to fight the deceased, he would follow his dead brother. The accused stated that another incident that underscores the bad relations between him and the deceased, she came and found the accused talking about cattle with his father and sat next to them. She joined their conversation and slighted the accused by stating that there was no point discussing family livestock with the accused because none of the cattle or goats were registered under his name, but under her name and one Mlungisi, respectively, and further that accused's father should rather discuss such issues with Mlungisi.

[24] The accused set as a backdrop events that occurred shortly prior to the death of the deceased. Earlier that day the accused had quarreled with his employer at Siphofaneni at a time close to pay day, and decided to quit the job before he could receive his due salary. On arrival at home he found that one of the cattle was missing from the kraal. He confronted PW2 in the kitchen and questioned him about the issue. He also highlighted to PW2 the risk that the missing beast might ravage maize fields. The deceased came and told the accused to leave PW2 alone and rather talk about his employment issue. The accused .id he then left for his house. In his evidence the accused did not get into what further happened after the deceased made the snubbing remarks, nor detail how the deceased met her death. He did however make refence to his confession to the magistrate.

-25] The accused admitted making a confession statement before Manzini Magistrate, wherein he said he explained how the deceased got injured. He told this court that he did not intend to kill the deceased. It took repeated prompting by defence counsel for the accused to address what exactly happened.

[26] Defence counsel read to the accused a portion of the statement. The accused then gave account of how the deceased followed him and came directly to him. He got terrified of her, the thoughts of what his father said that the deceased was going to kill him played in his mind. The deceased followed him to the rondavel where he went in and brought a spear.

CLOSING SUBMISSIONS

[27] The crown stated in closing submissions that the accused's guilt for murder had been proved beyond a reasonable doubt and that he should be convicted as charged for both murder and common assault. That the intention to kill was demonstrated by the nature of the attack, use of a lethal weapon and targeting the upper parts of the body. That the accused verbalized his intention to eliminate the deceased in his confession to the magistrate.

[28] Counsel for the accused submitted that it must be deemed that the accused could not have formed the intention to kill the deceased, due to the short space of time between their verbal argument and his fatal attack on the deceased. The defence submitted that the attack was "arried out in a spur of the moment, a factor which it submitted militates against intention.

[29] Counsel for the accused also raised self defence, arguing that the accused feared and believed that the deceased was going to kill him. Counsel moved that in the circumstances the accused should be found guilty of culpable homicide instead of murder.

FINDINGS

[30] The crown evidence through PW2 and PW3 as well as that of the accused shows that prior to the attack the accused and the deceased engaged in an acrimonious argument. The evidence shows that the deceased was unhappy with the accused for confronting her grandson over his failure to collect part of the family's livestock from the pastures, and the she made her feelings known to the accused. The accused stated in his words under cross examination that he stabbed the deceased twice with a spear before she fell down. The undisputed evidence of the accused reveals that a toxic relationship existed between him and the deceased. It was due to this ongoing bad relationship between the two that a bitter argument erupted over minor issue concerning PW2 and the cattle.

Mens rea

[31] From the evidence presented before the court inescapable inference can be drawn that the accused had a clear intention to kill the deceased. For instance, the accused's choice of a lethal weapon (a spear). He inflicted more than one severe injuries on the upper part of the body which houses vital organs such as the lungs. Exhibit "C"⁹ which was handed in by consent of the defence, is instructive on multiple injuries inflicted, some which are cited as the cause of death, namely, *"hemorrhage as a result of penetrating injuries to the lungs."* These are some of the injuries listed in the report: *"Penetrating wound over left breast outer*

1.) on 3cm x 1.7cm lung deep...front to back pleura cavity contained 800 ml blood; Cut wound outer aspect of left chest, and towards back 2.1cm x 1.2cm, 3 x 1cm muscle deep; Cut wounds over left arm outer aspect towards back 2.7cm x 1cm, 1.7x cm x 1.3cm muscle deep; Penetrating wounds over back of right chest 3cm x 1.2cm lung deep obliquely placed. It involved muscles intercostal structures, pleura, lung ...back to front pleural cavity contained about 900ml blood ...Cut wound over back of trunk, lower region away from midline right 1.2cm x 1cm deep."

[32] The fatal attack was not carried out suddenly or on a spur of the moment as alleged by the defence counsel. I accept the evidence of two crown witnesses, PW2 and Masangane that the deceased and PW2 walked away from the accused to deceased's house where and secured the door behind them. The accused followed them and pelted the house with stones, breaking the door and windows. After that he went to another house where he armed himself with a spear, came out and subsequently attacked and killed the deceased. It is clear from this sequence of events that there was enough time for the accused to cool off from the time

⁹ Post mortem report.

of their verbal confrontation up to the fatal attack. Having stoned the house, he made a conscious decision to fatally harm her when he decided to fetch the spear and stabbed her.

[33] There is no evidence that the deceased was armed with anything at all the material times. This therefore negates the claim of self defence made on behalf of the accused. There is no merit either in the submission that the alleged rumors that the deceased killed accused's brother in the past, justified the accused to kill the deceased to protect himself from a similar fate. The claim by the accused that he feared the deceased provides no lawful basis for the purported self-defense.

[34] The evidence led is consistent with the confession statement of the accused that he intentionally killed the deceased because of their differences. He blamed the deceased for his misfortunes concerning jobs. This was one of the reasons he told the magistrate for his decision to eliminate the deceased. He told this court in evidence that he suspected that the deceased attempted to poison him through the food. It is found that the accused had direct intention to kill the deceased. See *Thandi Kiti Sihlongonyane*.¹⁰ He is accordingly found guilty of murder in count one.

[35] Common assault in count two¹¹ has been proved by the evidence of the complainant, Jeremiah Dlamini and Masangane. The court accepts these witnesses' testimony that when they came closer to the scene the accused chased them away and threw stones at them, and one of the stones hit the Complainant.

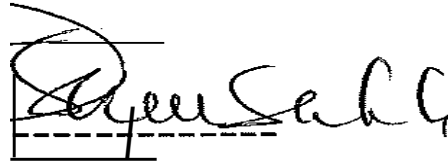
¹⁰ Appeal case No. 40/1997

¹¹ **Common assault charge.**

VERDICT:

COUNT 1 Guilty of murder

COUNT 2 Guilty of Common assault.

A handwritten signature in black ink, appearing to read 'D Tshabalala', is written over a set of horizontal lines. The signature is cursive and somewhat stylized.

D Tshabalala
Judge

For the Crown: Ms B Ndlela

For the Accused: Mr M Simelane