

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CASE No. 452/2022

In Matter between :

REX

APPLICANT

And

SIMANGA FELIX NHLABATSI

RESPONDENT

JUDGMENT

Neutral citation: *Simanga Felix Nhlabatsi v Rex (452/2022)SZHC 230 [2022] (21st October 2022)*

CORUM: Z. Magagula J

Date heard: 26.01.22, 15.02.22, 24.02.22 & 25.02.22

Date delivered: 21.10.22

Summary: Criminal law and Procedure, accused charged with two counts of attempted murder- accused pleaded guilty – Crown leading evidence to prove commission – effect of Section 338 of the Criminal Procedure and Evidence Act 67/1938.

Accused found guilty on both counts

- [1] The accused, Simanga Felix Nhlabatsi stands charged with two (2) counts of attempted murder. It is alleged in the indictment on count one; that on about the 2nd May 2020 and at or near Lokokoma area in the Shiselweni Region, the accused with intent to kill, did unlawfully assault Nosimilo Dlamini by hacking her with a sharp object several times on the head and arms, and did thereby commit the crime of attempted murder.

In count two, it is alleged that on or about the 2nd May 2020 and at or near Lokokoma area in the Shiselweni Region, the said accused person with intent to kill did unlawfully assault Langelihle Dlamini by stabbing her on the chest and arm with a sharp object and did thereby commit the crime of attempted murder.

- [2] On arraignment, the accused, who represented himself, pleaded guilty to both counts and the Crown led evidence to prove the commission of the offence. This is in keeping with Section 238 of the Criminal Procedure and Evidence Act 67/1938

Section 238 (1)

“if a person arraigned before any court upon any charge has pleaded guilty to such charge or has pleaded guilty to having committed any offence [of which he might be found guilty on the indictment or summons] other than the offence which he is charged, and the prosecutor has accepted such plea, the court may, if it is;

(a) the High Court or a Principal Magistrate’s court and the accused has pleaded guilty to any offence other than murder, sentence him for such offence without any evidence

(b) ...

Provided that if the offence to which he has pleaded guilty is such that the court is of opinion that such offence does not merit punishment of imprisonment without the option of a fine or a whipping or of a fine exceeding two thousand Emalangen, it may,

if the prosecutor does not tender evidence of the commission of the offence, convict the accused of such offence there upon his plea guilty, without proof of the commission of such offence and upon impose any competent sentence other than imprisonment and any other of detention without the option of a fine or a whipping or a fine exceeding two Thousand Emalangeni or it may deal with him otherwise in accordance with the law.”

- [3] The effect of this Section is that if the Crown fails or elect not to lead evidence of the Commission of the offence, the court could convict the accused of the offence or offences charged but can only sentence him to a term of imprisonment or a fine not exceeding two thousand Emalangeni.

See Rex v Sipho Ntshangase (126/17) [2017] SZHC 13 February 2017 and Chicco Shivambo v Rex (10/2019) [2019] SZHC 99 (05 June 2019)

- [4] The Crown called Nosimilo Angel Dlamini as its first witness. She is the complainant in count one; on the 2nd May 2020 she was home with PW2. It was around 9:00 pm when accused entered the cooking hut, they were in. The accused said he had come to talk to PW1 and one Nokwanda concerning a case or a complaint they had made against him, with the police. He asked PW1 to go withdraw the complainant. PW1 agreed to withdraw the complainant. The accused then asked PW1 to walk him out of the homestead which she refused to do; he instructed Langelihle, PW2 to instruct PW1 to walk out the accused. PW2, told the accused to leave because she did not want to go with him. The accused then drew a knife and stabbed Langelihle, PW2 on the arm for insisting that PW1 had not consented to walking him out of the homestead.
- [5] PW1 got the opportunity to pull free of the accused and attempted to run away. The accused caught up with her, tripped her to the ground and tried to stab her on the left hand side of the chest but the knife broke. The accused drew a grass slasher which he used to hit PW1 below the nose such that her upper jaw teeth fell off. He continued to hit her on the right cheek, on the head, on both arms and on the right elbow. When PW1's relative tried to intervene, the accused chased him with the grass slasher. He only let up when neighbours came to help. As a result of the assault on PW1, she lost consciousness and only came to in the hospital the following day.

[6] In the hospital PW1 was taken to the theatre where she received stitches in the mouth and could not open her mouth to eat or talk for two months. As a result of the injuries PW1 had scars which she showed to the court. The court was able to observe the following;

- (i) *A scar stretching from the upper lip to the nose*
- (ii) *A scar from the right hand side ear to the base of the neck*
- (iii) *Scars on both wrists.*
- (iv) *The right hand little-finger is deformed*
- (v) *A scar on the right elbow*

PW1 mentioned that the complaint, that the accused wanted withdrawn related to on ealier and unrelated assault against her by the accused.

When the right to cross-examine the witness was explained to the acused he indicated that he had no questions to ask.

[7] The next Crown witness was Langelihle Dlamini, the complainant in count 2. She told the court that the accused was the father to PW1's child. That he had on a previous occasion been to see the child. When he was leaving he sought to compel PW1 to leave with him and she refused. He assaulted her and when PW2 tried to intervene, he assaulted her too. They then made a complaint to the Domako Police Post. Pw2 said on the 2nd May 2020, the accused had come to their homestead to ask them to withdraw that complaint. They agreed. Again when he was leaving he attempted to compel PW1 to leave with him and she refused. PW2 intervened telling the accused that PW1 had said she does not want to leave with him.

[8] The accused then drew a knife and stabbed this witness on the arm and under the left breast. PW1 broke free from the accused and tried to run away, the accused tripped her to the ground where upon he, tried to stab her with the knife but found that the blade had been broken-off the handle. He drew a grass – slasher and cut her with it. Their cousin, Simanga Hlabatsi, tried to intervene and the accused chased after him with the grass-slasher. Other neihgbours who heard the commotion intervened and the accused then fled.

[9] PW2 was finally taken to hospital where she was admitted for three days. PW2 then identified the knife in court and the grass slasher. In cross – examination the accused only sought clarification on how many times was

the witness stabbed. PW2 explained that she was stabbed once, but the knife went through her arm and penetrated her skin just under the left breast.

The Crown next called PW 3 Thembi Beauty Nxumalo. She told the court that while at home on the 5th May 2020, at around 10:00 am she was approached by two police officers. The officers wanted her to accompany them to a nearby homestead. At that homestead the accused retrieved, next to a pit latrine an okapi knife with its blade broken. The accused had no cross – examination for this witness. The fourth Crown witness PW4, was Sibonginkhosi Nhlabatsi. This witness told the court that the accused was arrested in his presence. The accused then went into his own room where he pointed out a grass slasher, it had a black handle.

- [10] The Crown then called PW5, 3708 Assistant Inspector Mduduzi Ndlangamandla. This witness is the investigating officer, he received the docket where the charge was attempted murder. He found that Nosimilo Dlamini (PW1) and Langelihle Dlamini (PW2) had been assaulted by Simanga Felixe Nhlabatsi. Officer Ndlangamandla gave testimony on how he arrested the accused and how he pointed out to him and his colleagues an “okapi” knife with a brown handle and a broken blade. That accused also pointed out a grass slasher. All these he pointed out after due caution in terms of the Judges Rules. The broken knife and the grass slasher were handed in by consent and were duly marked Exhibit 1 and 2 respectively. The Crown thereafter handed in the medical report compiled by doctors Dlamini and Ayama both of the Hlathikhulu Government hospital. These were handed in by consent, which is permissible in terms of Section 221 (1) (b) of the Criminal Procedure and Evidence Act 67/1938. The Act provides;

Section 221 (1) “ In any criminal Proceedings in which any facts are ascertained-

(a) by a medical practitioner in respect of any injury to, or the state of mind or conditions of the body of, a person, including the results of any forensic test or his opinion as to the cause of death of such person.

(b) ...

Such facts may be proved by a written report signed and dated by such medical or veterinary practitioner, as the case may be, and that report shall be prima facie evidence of the matters stated there in"

- [11] The medical report in respect of PW1, Nosimilo Dlamini was compiled by Dr Dlamini; it was marked Exhibit "A" and the medical report in respect of PW2, Langelihle Dlamini, was compiled by Dr Ayama and was marked Exhibit "B"

After the Crown closed its case, the accused gave a sworn statement. He apologized to the court for wasting its time with the trial. He said his behavior was unacceptable. He apologized to the family of the complainants. The accused said he did not intend to assault the complainants. He was passing by and his way to Ntshaneni when he decided to approach them and ask that they withdraw the complaint, they had made against him in February 2020 for assault. He found the grass slasher at the complainants homestead, he wanted to use it to discourage the dog's which were backing at him. He said he found the knife on the window sill of complainant's cooking huts.

- [12] Whether the accused brought the assault weapons or he happened upon them per chance does not absolve the accused from the consequences of his brutal acts. This, quite apart from the fact that even if it were a defence, same was not put to the prosecution witnesses. It is now settled that to sustain a conviction for attempted murder it is not necessary to prove intention to kill. In the majority cases such intent may be difficult to prove.

T.Dlamini J in *Rex v Sikelela Brian Myeni* (25/2012) [2017] SZHC 218, quoted with approval by Mlangeni J in *The King v Sabelo Siboniso Motsa* (253/15) [2020] SZHC (44) stated;

"it is sufficient that there was an appreciation that there is a risk to life in the action contemplated such appreciation should be coupled with recklessness about whether or not death eventually occurs"


- [13] The second complainant was stabbed on the left – hand side of the chest just below the breast, this is a critical area in the human anatomy and any deeper penetration could have been fatal .

LaNgwenya J. in **Rex V. Christopher Dlamini and another (335/13)**
[2019] SZHC 178 stated;

“ Attempted murder requires an actus reus and mens rea. An accused person must appreciate that the injury he intends to inflict on his victim may cause death and regardless inflict that injury recklessly with no regard whether death ensues or not”

The assault on PW1 resulted in what the doctor called a “ Fractured Maxila”, that is when the bone of the upper far is fractured. The accused in his own evidence said he struck at PW1 when she was on the ground and since it was dark he did not see where the slasher blows landed. This shows a reckless disregard of the consequences of his action

On the evidence before this court and the accused’s own plea, he is found guilty of attempted murder on both counts.

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Z. Magagula
Judge of the High Court

Appearances: Mr. M S Dlamini for the Crown
Accused in person