

IN THE HIGH COURT OF ESWATINI

HELD AT MBABANE

CRIM. CASE NO: 32/2020

In the matter between:

REX

VS

ZANELE NELLY SIFUNDZA

Neutral citation : *Rex v Zanele Nelly Sifundza (32/2020) SZHC 3 [2023] (06/02/2023)*

CORAM: B.S. DLAMINI J

DATE HEARD: 10 November 2022

DATE DELIVERED 06 February 2023

Summary:

Criminal proceedings-Accused facing a charge of Murder. Plea of not guilty entered by Accused with the latter arguing that she was forced to defend herself against the violence meted against her by the deceased. Requirements of self-defence examined in detail.

Held;

The evidence led in Court shows that the deceased was the aggressor and that he was the one who produced a knife during the altercation with the accused person.

Held further;

The amount of force used by the accused on the deceased upon wrestling the knife from the deceased was excessive and uncalled for. Upon picking up the knife from the ground after it fell from the hands of the deceased, the accused had the option of walking away instead of administering a fatal injury on a sensitive part of

the deceased. The accused accordingly acquitted on the charge of murder but found guilty on a lesser charge of culpable homicide.

JUDGMENT

INTRODUCTION

- [1] The Accused person, Zanele Nelly Sifundza, was indicted on a charge of Murder in that **'upon or about the 1st January 2020 at or near Shewula area in the Lubombo Region, the said accused person did unlawfully and intentionally kill one Ngcebo Magagula, and did thereby commit the crime of Murder.'**
- [2] In seeking to prove commission of the offence by the accused, the Crown paraded a total of eight (8) witnesses. A summary of the evidence by the key witnesses of the Crown is analyzed herein below.

CROWN'S EVIDENCE

- [3] PW1 (Sandile Magagula) testified as a first witness for the Crown. His testimony was that he resides at Shewula area and that on the 1st January 2020, he was with Zanele Sifundza (the accused) and one Majaha Maziya and they were enjoying alcoholic beverages at a drinking spot at a place called eNgweni area. At some point the alcohol they were drinking got finished. The accused person and Majaha Maziya left together to buy more alcohol but after a short moment, Majaha Maziya came back alone without alcohol. Later the accused person came back and told PW1 to listen what one of the patrons was saying to her. The witness enquired who the other patron was and the accused told him it was one Thabo Magagula and that the latter had slapped her on the face with an open hand.
- [4] PW1 and the accused person went back to where the other patrons were seated in the drinking spot. The accused enquired from Thabo Magagula on why he had slapped her. An altercation ensued between the accused and Thabo Magagula. PW1 tried to intervene and bring peace between the parties but one of the patrons by the name of Gobela told PW1 not to interfere and held PW1's hands behind his

(PW1's) back. One Ngcebo Magagula (deceased) joined his brother Thabo Magagula in fighting with the accused person.

- [5] PW1's testimony was that Thabo and Ngcebo Magagula assaulted the accused person until she fell down. They proceeded to kick her on the body and her head while she was on the ground at which point PW1 approached Ngcebo Magagula and told him that they had beaten her excessively and should stop any further assault on her. The accused rose from the ground and Ngcebo wanted to continue assaulting her but Gobela held him back. According to PW1 the fight continued and this time it was between the accused person and Ngcebo Magagula.
- [6] During the scuffle between the accused person and Ngcebo Magagula, PW1 saw the latter carrying a knife. The witness saw the accused person holding Ngcebo Magagula's hand which had the knife. The knife, according to PW1, fell on the ground. Both parties went for the knife on the ground but accused person was able to reach for the knife first. At that point, Ngcebo Magagula retreated and the accused person went for him and stabbed him around the chest area. The witness estimated that during the stabbing, the deceased had retreated to about

one and a half meters away from the accused person. The said Ngcebo Magagula (whom I shall henceforth refer to as the deceased), was leaning against a wall.

- [7] PW1 stated that upon seeing that the deceased had been stabbed, Gobela who had still been holding him let go of him. The witness enquired from Gobela if he had seen what had just happened but Gobela told him to go away in a provocative manner.
- [8] PW1's testimony was that Majaha Maziya came to fetch the accused person and he followed them as they left the drinking spot. PW1's evidence was that the accused person stated that she wanted to call the police and report about the incident. The whole incident, according to PW1 took place around 1:30 am on the 1st January 2020.
- [9] PW1 was cross-examined by the accused person's legal representative with the intention of establishing that the deceased was the aggressor and that he had assaulted the accused and later produced a knife with the intention of stabbing the accused person. During cross examination, it was put to PW1 that accused person stabbed the

deceased in self-defence as the latter had produced the knife with the sole objective of causing serious harm to the accused person.

[10] PW3 (Mancoba Sandile Simelane) was brought in as the third witness for the Crown. The testimony by PW3 was that he resides at Mbikwakhe area in Matsapha. This witness testified that on the 31st December 2019, he was at Shewula at eNgweni area at a Mabila homestead where they were sitting and enjoying alcoholic beverages. The witness was in the company of Thabo Magagula, Ngcebo Magagula and Takhona Tsabedze. They had arrived at the drinking spot at around 9:00 pm.

[11] According to PW3, as they were sitting and drinking, Thabo Magagula left the group and went to some other people within the drinking spot to dance and mingle with them. After about 5 minutes, Thabo came back and was being followed by the accused person. The accused person, according to PW3, was accompanied by two of his brothers. These were Majaha and Sandile. PW3's testimony was that there was a brief altercation but they were able to separate them. According to PW3, the accused person and Thabo Magagula cooled off after their intervention.

[13] PW3 stated that the accused person started an altercation with Ngcebo Magagula. The noise according to PW3 had risen and this had attracted a lot of people to gather around the fighting people. PW3's testimony was that he was a little bit far from the incident itself as one Majaha was restraining him from separating the fighting persons. Majaha, according to PW3, was against the fight being stopped as he alleged that the accused person and the deceased were lovers and needed to be left alone to sort out their own issues.

[14] According to PW3, as the accused person and the deceased were confronting each other physically, the deceased eventually pushed the accused person and she fell on the ground. In the process of falling down, the accused was cut by some beer bottles and got injured in her hand. The evidence by PW3 was that the accused person was wearing a white net t-shirt from which she drew out a knife which was placed under her bra. The accused, according to PW3, took out the knife and proceeded to stab the deceased with it. In stabbing the deceased, the accused, according to PW3, used force to make a deep cut while the knife was still embedded on the deceased flesh.

[15] PW3's evidence was that there was sufficient light when the incident took place and he could clearly see the accused person taking out a 3 star knife from her bra, opening it with her teeth and then taking three steps towards the deceased and proceeded to stab him while they were facing each other.

[16] During cross-examination, it was put to PW3 that he was misleading the Court in stating that it was the accused person who produced the knife with which the deceased was killed. It was put to this witness that in fact it was the deceased who produced a knife and attempted to stab the accused person. The accused person's legal representative put it to the witness that after the deceased produced the knife, both the accused person and the deceased wrestled for it and the knife fell down and it was then that the accused person picked it up first and proceeded to stab the deceased in self-defence. PW3 denied this version of events.

[17] PW4 (Majaha Phila Maziya) testified that he is a resident of Shewula area. On the 1st January 2020 this witness was amongst the patrons at eNgweni area at the Mabila homestead. The witness was in the

company of Sandile Magagula and the accused person (Zanele Sifundza) and the group was enjoying alcoholic beverages. The testimony by PW4 was that as they were sitting and drinking, the alcohol got finished and they decided to buy more alcoholic beverages. The line which was queuing to purchase alcohol was too long and they decided to buy time on the dance floor. As they were standing by the dance arena, Thabo Magagula approached them and went straight to the accused person and slapped her with an open hand on the face.

- [18] After slapping the accused person, Thabo Magagula went back to rejoin his brothers and the accused person followed him. Upon the Accused reaching the group, a fight ensued between her and Thabo Magagula's group. PW4 stated that he tried to separate the parties but was restrained from doing so as the accused person and Ngcebo Magagula were lovers. According to PW4, after the fight was temporarily stopped, it later continued between the accused person and the deceased.

[19] According to PW4 there were many people around the place where the fight between the accused person and the deceased was taking place. PW4 stated that after the crowd had dispersed, he saw the accused person loitering around. This witness held the accused person by her hand and she informed him that she wanted to call the police and make a report about the incident. The accused person did call the police and reported about the incident and was told to go to the police station to make a statement. PW4 told the accused person that he could not accompany her to the police station as he was drunk and did not want trouble.

[20] During cross-examination, PW4 stated that he was not able to see who produced the knife between the accused person and the deceased. The witness was also not able to see how the deceased got stabbed by the accused person.

[21] PW2, (Detective Constable Ntokozo Mdletshe) is an officer working in the criminal investigation department (CID) within the police service. This witness works as a scenes of crime officer. After the incident was reported to the police on the 1st January 2020, this

witness, together with other police officers went to Shewula Clinic to perform their duties. After introducing themselves as police officers to the clinic personnel, they were ushered into a room where there was the body of the deceased wrapped in a blanket.

[22] Upon removing the blanket, the witness made his own observations as a scenes of crime officer. The witness then took several photographs of the deceased and proceeded to compile a photo album which he presented in Court as part of his evidence. The photo album consisted of a total of 8 photographs of the deceased. The photographs showed a deep and wide wound on the left side of the deceased chest.

[23] PW5 (Dr Samuel Dinegde) is a medical practitioner who used to work as a General Surgeon at Good Shepard Hospital until June 2022. On the 2nd January 2020, this witness examined the injuries inflicted on the accused person. The injuries observed by this witness were on the right little finger, right elbow and left jaw of the accused person. The witness treated the injuries on the accused person and later released her.

[24] PW6 (3971 Detective Sergeant Wellington Dlamini) was the investigator in the matter. The witness informed the Court that upon receiving a report about the incident, he together with other officers went to Shewula Nazarene Clinic whereupon arrival, they saw the lifeless body of the deceased

[24] PW6 stated that the lifeless body of Ngcebo Magagula had a deep penetrating wound on the left side of the chest. The witness stated that after the accused had recorded a statement at the police station, he introduced himself to the accused person as the main investigator in the matter. PW6 Informed the Court that he then explained all the legal rights to Zanele Sifundza who at the time was a suspect in the commission of the offence. The witness proceeded to arrest the accused for the offence of murder.

[25] Upon further investigation at the Mabila homestead, PW6 in the company of the accused person were not able to locate the weapon used in the commission of the offence.

[26] PW6 was also cross-examined at length by the accused person's legal representative. It was put to the witness that the accused person had reported a case of assault against the deceased on a prior incident to a certain Gamedze Police Officer who was in charge of the station. When the report was made to Gamedze, the latter had laughed off the accusations made by the accused person against the deceased. It was contended that Gamedze had asked the accused person why she had let the deceased 'get to taste her private parts' as the latter was now refusing to let go of her. PW6 in response stated that these accusations had been denied by Gamedze in his presence.

ACCUSED PERSON'S EVIDENCE

[27] The accused person gave evidence with the aim of defending herself against the charge of murder preferred on her. The evidence by the accused person (DW1) was that on the 31st January 2019, she went to a Mabila homestead at eNgweni area. Upon arrival at the homestead she found Kwanele Magagula and one Majaha Maziya whom she joined in enjoying alcohol beverages.

[28] According to the accused person, at some point the alcohol they were drinking got finished. One Kwanele Magagula then gave the accused person E 50.00 and instructed her to go with Majaha Maziya to buy more alcohol. Before accused and Majaha could get to the window in which alcohol was sold, they were confronted by Thabo Magagula who proceeded to slap accused with an open hand on her face. The accused asked Thabo why he was hitting her, the latter did not respond but instead ran away to rejoin his group.

[29] The accused followed Thabo to enquire why he had beaten her. On reaching Thabo's group, a heated debate ensued and Thabo slapped her again. The two brothers joined hands in beating the accused and she tried to fight back. Accused's testimony was that in the process of beating her, she tripped and fell on the ground. Majaha Maziya and Kwanele Magagula attempted to come to her aid but other patrons told them not to interfere in the fight.

[30] According to the accused, Ngcebo Magagula continued to beat her even after Thabo had stopped beating her. The testimony by accused was that she was tired and lying on the ground. The two brothers were

using fists, open hands and kicks to assault her all over her body. As accused was lying on the ground she saw Ngcebo carrying a knife and approaching her with it held in his hand. The accused held Ngcebo and the knife fell on the ground. The accused was able to get to the knife first on the ground. According to the accused, no one among the patrons restrained Ngcebo as he approached her with the knife.

[31] When the accused got hold of the knife, she used it to stab Ngcebo once on the chest and, in her testimony, she did this in her defence as she had been severely assaulted by the duo. The accused stated that it was only upon realizing that Ngcebo had been stabbed that the patrons sought to intervene and restrain the parties from further assaulting each other. The accused's testimony was that after stabbing Ngcebo, she threw the knife on the ground.

[32] The accused stated that she then borrowed a phone from Banele in order to call the police and report about the incident. The police eventually came to the scene and took her with them. The accused was taken to Shewula clinic where she was treated and discharged.

[33] The evidence by the accused was that she was once in a love relationship with Ngcebo Magagula but that relationship had come to an end. According to the accused, after the relationship came to an end, Ngcebo insisted on talking to her and making things up with her which she was not prepared to do. The evidence by the accused was that at some point, she had to remain in her home and could not go out because of fear of a confrontation with Ngcebo. The accused took a decision to report the matter to the police. According to the accused, her cellphone was still with Ngcebo and he was refusing to hand it back to her. At the police station, she was attended by Gamedze, Vilakati and Gina. When Gamedze heard her narration of the problems she was facing, he laughed and enquired why accused had engaged in sexual intercourse with Ngcebo as he was now refusing to let go of her.

[34] According to the accused, the Vilakati officer she found at the police station called Ngcebo and told him to report to the police station. Ngcebo indeed went to the police station and when told about the phone belonging to the accused, he made an undertaking that he would give it back to the accused as it was not with him at that point.

According to the accused, the police refused to talk about the relationship and the fact that Ngcebo was assaulting her for refusing to continue with the relationship.

[35] The accused was cross-examined by the Crown's representative. The crown sought to establish that the accused was the aggressor, having been the one to spill liquor on Thabo Magagula and thus causing the fight between the parties. The Crown also sought to establish that the knife was brought by the accused and that upon accused taking possession of the knife, the danger ceased to exist and therefore that it was not necessary to inflict such a fatal wound on the body of the deceased.

[36] In her defence, the accused also subpoenaed Sergeant Dumisani Gamedze to shed light on the role he played leading to the commission of the offence. This witness however denied having received a report of a previous assault by the deceased on the accused. The witness maintained that the only report made at the police station by the accused was that of a cellphone which was in the possession of the deceased. That issue, according to this witness, had been resolved

to the satisfaction of the accused. This witness denied having made the unpleasant statements attributed to him since no issue of a previous assault had been reported at the police station by accused.

ANALYSIS AND CONCLUSION

[37] The Court is called upon to make a determination on whether the offence of murder attributed to the accused has been proven beyond reasonable doubt by the Crown.

[38] Murder is defined as the ‘**unlawful and intentional killing of another human being.**’ (*S v Dube (CC03/22) [2022] ZAMPBHC 28 (03 May 2022)*). The necessary requirement of ‘intention’ can take the form of either *dolus directus* (direct intention); *dolus indirectus* (indirect intention) *dolus eventualis* (intention cumulatively taken from the overall facts of the matter) and *dolus indeterminus* (intention imposed by law). In the present matter, the Crown relies on *dolus eventualis* as the legal basis upon which the accused is to be held liable for the offence of murder.

[39] In *S v Pistorius* 2016 (1) SACR 431 (SCA), it was held by the Supreme Court of Appeal (South Africa) that;

“In cases of murder, there are principally two forms of *dolus* which arise: *dolus directus* and *dolus eventualis*. These terms are nothing more than labels used by lawyers to connote a particular form of intention on the part of a person who commits a criminal act. In the case of murder, a person acts with *dolus directus* if he or she committed the offence with the object and purpose of killing the deceased. *Dolus eventualis*, on the other hand, although a relatively straightforward concept, is somewhat different. In contrast to *dolus directus*, in a case of murder where the object and purpose of the perpetrator is specifically to cause death, a person’s intention in the form of *dolus eventualis* arises if the perpetrator foresees the risk of death occurring, but nevertheless continues to act appreciating that death might well occur, therefore ‘gambling’ as it were with the life of the person against whom the act is directed. It therefore consists of two parts: (1) foresight of the possibility of death occurring; and (2) reconciliation with that foreseen possibility. This second element has been expressed in various ways. For example, it has been said

that the person must act 'reckless as to the consequences' (a phrase that has caused some confusion as some have interpreted it to mean gross negligence) or must have been 'reconciled' with the foreseeable outcome. Terminology aside, it is necessary to stress that the wrongdoer does not have to foresee death as a probable consequence of his or her actions. It is sufficient that the possibility of death is foreseen which, coupled with a disregard of that consequence, is sufficient to constitute the necessary criminal intent."

[40] The Crown has submitted as follows;

"21.1 The Crown submits that it has successfully established a strong case of murder against the accused. There is no dispute that the accused unlawfully killed the deceased.

21.2 The Crown submits that the intention to kill the deceased was in the form of *dolus eventualis*. The deceased died as a result of a stab wound inflicted upon him by the accused on the chest area. Such injury was described by the pathologist in paragraph 1 on page 2 of the post mortem report that the injury was a "*penetrating injury over front of the left chest above nipple obliquely placed 5.2 cm X 2.1 cm lung deep. It involved muscles intercostal structure rib, pleura lung upper*

lobe (2.2 cm X 0.9 cm) edges cleanly cut, angle sharp. Front to back medially. Pleural cavity contained about 1,700 ml blood."

The location of the injury was penetrating from the chest and onto the lung. In the case of *Rex v Sabelo Kunene (445/2011) [2014] SZHC 164 Maphalala M.C.B J* as he then was, paragraph 26 of that judgment had this to say with regards to a murder case quoting from *Willian Mceli Shongwe v Rex Criminal Appeal No. 24/2011* at para 46;

"In determining *mens rea* in the form of intention, the court should have regard to the lethal weapon used, the extent of the injuries sustained as well as the part of the body where the injuries were inflicted. If the injuries are severe such that the deceased could not have been expected to survive the attack, and the injuries were inflicted on a delicate part of the body using a dangerous lethal weapon, the only reasonable inference to be drawn is that he intended to kill the deceased."

[41] The Crown has also put the defence raised by the accused into question. In this regard, it has been argued by the Crown that the requirements of self-defence have not been met by the accused person. The argument by the Crown is that;

"The Crown humbly submits that at the point of the fight, the evidence by PW1 and the accused is to the effect that the knife fell down and they wrestled over it and the accused gained control of

the knife, the least dangerous means she could have adopted were for her to flee the area [while] in possession of the knife as opposed to inflicting the stab wound on the fragile part of the body to which she did. We submit that the means she used were excessive in that the location of the injury was such as the deceased would not have been expected to survive the attack, he died in a short space of time after the attack and the weapon itself was lethal.”

[42] The defence on the other hand submits that the actions of the accused constituted self-defence as she was under heavy attack from the deceased and Thabo Magagula. It is submitted on behalf of the accused that;

“40. From the summary above the accused passed the two-fold test to sustain self-defence as a criminal defence in that;

(a) She was unlawfully attacked by Thabo who was a brother to the deceased. The deceased and the accused were once in a romantic relationship which had ended. Therefore it would not be far-fetched to suggest that Thabo was avenging his brother’s heartache from the breakup. Hence why he slapped

the deceased. The deceased [accused] in the heat of the clap she proceeded to enquire as to why Thabo slapped her and that is when the deceased pounced on her and they, in concert beat, slapped and kicked the accused who at some point fell on the ground and the 2 boys continued with assaulting the accused.

(b) The accused was in the company of Sandile and Majaha who when they tried to intervene and or break off the fight, they were told by PW3 that they should let them fight as they are lovebirds. With PW1 and PW4 restrained the accused had no option but to apply a reasonable force to ward off the unlawful attack by the deceased....as they were fighting, the deceased pulled out a knife and naturally where one pulls out a knife during a fight once can easily conclude that the person intends to stab whoever he or she is engaged in a fight with. The accused was at that point in eminent danger as she had already been kicked, beaten and slapped by the duo and now the deceased wielded a knife, she feared for her life and impulsively applied means to repel the imminent danger by

getting hold of the knife that had fallen off the deceased and then stabbing him with it.

(c) The Crown contends that the accused should have took to her heels when the knife fell off the deceased as she was no longer in imminent danger. That argument cannot hold water in this honourable court taking into account the fact that the accused was drunk, she had been slapped by Thabo unprovoked and further assaulted with fists and kicks all up to her face by the deceased acting in concert with his brother and thereafter the deceased decided to wield out a knife with the full intention to finish her off, it is inconceivable to expect the accused to up and run from the deceased in that state of anguish.”

[43] The accused legal representative referred the Court to several cases and also to some authoritative legal texts. The Court was referred to the case of *S v Mini* 1963 (3) SA 188 (AD) in which it was held by the Court that;

“In attempting to decide by inferential reasoning the state of mind of a particular accused at a particular time it seems to me that the trier of fact should try mentally to project himself into the

position of that accused at that time. He must of course also be on his guard against the insidious subconscious influence of ex post facto knowledge.”

[44] The undisputed evidence presented in Court was that it was Thabo Magagula who ignited the entire dispute leading to the death of Ngcebo Magagula. It is not surprising that the crown elected not to call this witness to shed light on why he assaulted the accused with an open hand in the face. The evidence presented in Court showed that Thabo Magagula slapped the accused without any provocation. It is therefore not correct that the fight between the parties was started by the accused by allegedly spilling alcohol on Thabo Magagula.

[45] The evidence presented in Court was that when the accused confronted Thabo Magagula’s group to enquire about the reason why she had been assaulted by Thabo, the latter, assisted by his brother, subjected the accused to more assault with fists, kicks and open hands until she fell on the ground.

[46] There is also sufficient evidence to conclude that it was the deceased who produced the knife with which he intended to use in further assaulting the accused. The Crown's first witness, Sandile Magagula, was unshaken in his testimony that he saw the deceased holding a knife in his hand and that the accused and the deceased later wrestled for the knife. The version given by the accused person regarding ownership of the weapon used in the commission of the offence appears to be probable and factually correct. This Court is persuaded by the evidence of PW1 as opposed to the evidence of PW3 regarding ownership of the knife.

[47] The act of stabbing the deceased by the accused, does not on its own, establish an intent to kill. The facts must be considered as a whole. If it is an accepted fact that it was the deceased who produced a knife during the fight with the aim of causing harm to the accused, then by all means, the accused was entitled to take reasonable steps in defending herself. The only determination to be made is whether the force employed by the accused was reasonable in the circumstances.

[48] In the High Court case of **The King v Bongani Bavukile Dlamini**

(Case No: 333/2014) SZHC 143 [2017] it was held by the Court that;

“[32]...The law relating to self-defence is well settled in our jurisdiction and the Constitution of the country has added its weight to it, as if that was necessary. According to section 15 (4) use of force that results in loss of life is lawful where the force used “is reasonably justifiable and proportionate in the circumstances of the case...” In my view the Constitution has done nothing more than restate the well-articulated common law. The Supreme Court of Swaziland [Eswatini] has stated the requirements of self defence as follows:

“31.1 The accused must have been unlawfully attacked and had reasonable grounds for thinking that he was in danger of death or serious injury at the hands of his attacker.

31.2 The means used in defending himself were not excessive in relation to the danger.

31.3 The means he used were the only or least dangerous means whereby he could have avoided the danger.”

[49] The means used by the accused in seeking to defend herself from the attack by the deceased were, in the Courts view, excessive. By using

excessive means to defend herself, the accused cannot be said to have possessed the necessary *dolus eventualis* but at best was reckless in causing the death of the deceased.

[50] In *S v Naidoo and Others* (321/2001) [2002] ZASCA 136; [2002] 4 All SA 170 710 (SCA) (14 November 2002), it was held by the Court that;

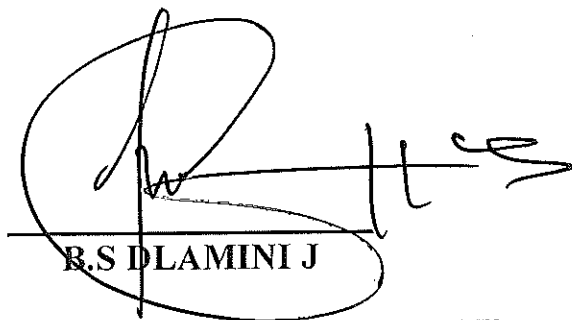
“[29] The crime of culpable homicide, on the other hand, (certainly as regards the consequence (death) of the impugned act or omission) postulates an absence of *dolus* and the presence *culpa*. The fact that the crime of culpable homicide may be committed even where the act which causes death is an intentional act of assault should not be allowed to obscure the essential truth...”

[51] In the present case, the accused, though lacking the necessary *mens rea* to establish commission of the offence of murder, must have appreciated that plunging a knife deep on the left side of the chest, above the nipple, is likely to cause serious harm to her assailant and, despite this appreciation, accused still continued to act in the manner

she did and thereby recklessly causing the death of her assailant.

Though the line may be thin, the appreciation of serious harm being caused does not necessarily equate to an appreciation of actual death occurring. It cannot be disputed that the accused did not cause the death of the deceased by sitting down and sketching a plan for bringing about the death of the deceased. The fight was started by a member of the deceased's group and the weapon used was produced by the deceased himself.

[52] In conclusion, this Court finds the accused not guilty of the crime of murder but guilty of culpable homicide.

A handwritten signature in black ink, appearing to be 'R.S. Dlamini', is written over a horizontal line. Below the signature, the text 'R.S DLAMINI J' is printed in a bold, sans-serif font.

THE HIGH COURT OF ESWATINI

For Accused Persons:

Miss. N. Hlophe (Mongi Nsibande & Partners)

For the Crown:

Miss L. Dlamini (DPP's Chambers)