



**IN THE HIGH COURT OF ESWATINI**  
**JUDGMENT**

**HELD AT MBABANE**

**CASE NO: 536/20**

In the matter of:

**REX**

Versus

**SIYABONGA SDUMO TSABEDZE**

Neutral Citation: *Rex vs Siyabonga Sdumo Tsabedze [536/2020] [2023]*  
*SZHC 102 (24 April 2023)*

Coram: **LANGWENYA J**

Heard: 28 March 2023; 5 April 2023; 24 April 2023

Delivered: 24 April 2023

Summary: *Criminal law-Criminal Procedure-the accused was charged with murder-the accused pleads private defence-no eye witness-accused's version he acted in private defence not discounted by the Crown-accused acquitted and discharged.*

### **JUDGMENT**

- [1] The accused is charged with the offence of murder. It being alleged by the Crown that on or about 14 November 2020, and at or near Malongwe in the Shiselweni district the said accused person did unlawfully and intentionally kill Wandile Trinity Mkhwanazi.
- [2] When the charge was put to the accused, he pleaded not guilty.
- [3] The Crown presented the evidence of four witnesses. The accused was the only witness for the defence.
- [4] The Court heard that the deceased is the cousin of Sibusiso Kenneth Magagula. Mr Magagula testified that on 14 November 2020 he had been having alcoholic drinks for the better part of the day and night at Mandvulo school, Buseleni. While he was enjoying his drinks, the deceased arrived and also had drinks with PW1-Mr Magagula. The deceased is said to have spent half an hour to an hour enjoying drinks at Mandvulo school before he left. The Court heard that although the deceased was drunk, he could still walk unaided. Mr Magagula informed the Court that when he left Mandvulo school to go home, he had had one too many.
- [5] It is PW1's evidence that while he was walking home, he found the deceased bloodied and injured and lying in a pool of blood. The deceased was unresponsive when PW1 called him. No sooner had PW1 arrived at the scene where deceased was found unresponsive than deceased's father

arrived. They both tried to administer first aid by trying to stop the bleeding of the deceased without success. The police were called and they later arrived.

- [6] PW1 arrived at the scene of crime after the deceased had been stabbed. He did not see who stabbed the deceased and does not know the circumstances surrounding the stabbing of the deceased.
- [7] The second Crown witness is Ncamiso Sikhalo Dladla. He testified that the accused arrived at Mr Dladla's home at around 4am on the day of the incident. The accused informed Mr Dladla that he had accidentally killed someone at a place unknown to him. The accused further informed PW2 that he had left the knife he had used to stab the deceased at the scene of crime. According to PW2, the accused was wearing a white vest which had blood stains on it. The blood on accused's vest was mixed with red soil. The bloodied part of accused's vest was on the front side. PW2 did not see any visible injuries on the accused when he made the admission to him.
- [8] After making the admission, the accused is said to have asked for a place to sleep. He was allowed to sleep in one of the houses in PW2's homestead. He woke up, asked for food and was given the food which he ate and left the Dlamini homestead where Mr Dladla lived.
- [9] Mr Dladla later told people at his community and the police that the accused had ~~made~~ admitted to killing the deceased. He later recorded a statement with the police.
- [10] The scenes of crime officers arrived at the scene on 15 November 2020 and found the father of the deceased at the scene. It is deceased's father who showed the police the scene of crime. The scenes of crime officers took

photographs of the scene of crime. At the scene of crime they found a blade of an okapi knife which had blood stains next to the body of the deceased. The body of the deceased had a stab wound on the neck and on the face; deceased's left arm was also covered with blood. The body of the deceased was taken to Hlathikhulu government hospital mortuary after a medical practitioner had certified him dead.

- [11] The investigating officer is 5090 Detective Constable Makhosonkhe Raymond Dlamini. On 18 November 2020 he interviewed Sikhalo Dladla and got information that the accused had admitted to Mr Dladla that he had accidentally killed a person. The police visited the accused's person's parental home and did not find him there. They left a message with Mr Dumsani Tsabedze-an uncle of the accused-that the accused should report at the police station. The accused was brought to the police station by his father-Mr Gcina Tsabedze.
- [12] The police introduced themselves to the accused and informed him that they were investigating a crime of murder. They cautioned him in terms of the Judges' rules and questioned him about the matter. The accused cooperated with the police. The accused voluntarily pointed out the clothes he was wearing during the commission of the offence at his house at his parental homestead. He pointed out a white vest and blue jeans. The white vest had been washed but it still had traces of blood stains on it. The white vest and jeans were retrieved from a house which was built with sticks and mud. The vest was retrieved from clothes that were hanging next to the wall. The jeans were retrieved from a corner next to the bed. The police took the clothes, packaged and kept the clothes as exhibits. The jeans and the white vest were marked exhibit 2 and exhibit 3 respectively. The room where the clothes of

the accused were retrieved belongs to the accused. At the time of the commission of the offence, the police learnt that the accused lived with Bongani Hlophe in his house. Bongani Hlophe was visiting.

[13] On 24 November 2020 the accused made a confession before a judicial officer at Nhlangano Magistrate's court. In his confession the accused states that on the day of the incident, at night time, he was on his way to the funeral when he was accosted and attacked by the deceased. The deceased punched the accused with a fist on the right eye. The accused fell to the ground. The accused got up and retaliated and a fist fight ensued. The duo wrestled with each other, fell and rolled on the ground. The deceased overpowered the accused after the accused fell to the ground facing upward. At that time, the deceased was choking the accused while he also pressed him to the ground using his knees which were on accused's chest. It was at that point that the deceased took out a knife and tried to stab the accused. Before the deceased could stab the accused, the accused was able to disarm the deceased of the knife and immediately stabbed the deceased once in the chest. The knife broke into two pieces; one of the two pieces remained embedded in deceased's body while the other piece of the knife fell to the ground. At that moment, the deceased let go of the accused. The accused got up and left the scene. The accused left the deceased at the scene of crime.

[14] The accused's confession corroborates the evidence of Mr Dladla regarding the admission he made to him. The accused later admitted to his uncle and to his biological father that he had killed the deceased. He was taken to the police by his father. The confession was handed in by consent and was marked exhibit 'A.'

[15] According to the post-mortem report, the deceased's death was due to bleeding as a result of a penetrating injury over the left side of the upper neck region involving blood vessels. The pathologist detailed the particulars of the injury. The post mortem report was handed in by consent and was marked exhibit 'B.'

[16] The Crown closed its case.

### **Defence case**

[17] On 14 November 2020 the accused was having alcoholic drinks at a Dlamini homestead with Bongani Hlophe and they were later joined by Mcege Dlamini. Mcege was with Mthobisi Tsabedze when he arrived at the Dlamini homestead. Mthobisi Tsabedze is a brother of the accused. The accused and his drinking companions left the Dlamini homestead at about six in the evening aboard Mcege's vehicle. Mcege's vehicle dropped the accused and the rest of his companions along the way. The accused went to answer the call of nature and on return found that his companions had left him after they got another lift.

[18] The accused then followed his companions on foot and at the time it was dark. As he was walking, the accused was accosted by a stranger who was aggressive and used vulgar language directed at the accused. The stranger sounded like an angry person. The stranger enquired from the accused who he was. At the time the accused met with the stranger, who turned out to be the deceased, he was seated next to the road, resting because he was tired. The accused says he asked the deceased who he was looking for. Instead of responding to the accused's question, the deceased is said to have muttered that: accused's voice was unfamiliar to him. The accused says he retorted by

asking the deceased if the road belonged to the deceased that he should know everyone who uses it. The deceased is said to have come close to the accused and that is when the accused rose to his feet. The accused was punched by the deceased with a fist on the right eye.

- [19] The accused testified that he fell and rose and a fist fight ensued. The accused was overpowered by the deceased and again fell to the ground. The deceased sat on top of the accused. The accused lay on the ground facing upward. The deceased strangled the accused on the neck while he knelt on his abdomen and pressed him to the ground. The deceased is said to have taken out a knife from his pocket and attempted to stab the accused. The accused and the deceased fought over the knife while the accused was still underneath the deceased. The accused overpowered the deceased, disarmed him of the knife and stabbed him and the knife broke. The accused pushed the deceased over and he got up and left the scene.
- [20] When the accused stabbed the deceased, the deceased was still on top of the accused. When the accused rose from the ground, he heard voices of people and a car emerged. The accused fled the scene because he thought the people coming towards the scene could attack him. The accused suspected that the people were the companions of the deceased. The accused fled and hid in the bush where he later fell asleep. He only woke at 4am and walked past the scene of crime where he saw a lot of people there.
- [21] He later went to the Dlamini homestead where he made an admission that he had accidentally killed a person to Sikhalo Dladla. After sleeping for some time at Sikhalo's home, the accused arose and later went to his parental home. On the following day, he went to Hlathikhulu police station ostensibly to report the crime. While at the police station he was overcome by fear and

left without reporting the crime. He was later handed over to the police by his father. The police questioned him.

[22] The accused told the court that he was sorry about the incident resulting in the death of the deceased. He apologised to the family of the deceased and stated that it was not his intention to kill the deceased.

[23] During cross examination, the accused stated that he did not tell Mthobisi Hlophe about the incident when they found him at the Dlamini homestead because he was still shocked and was in denial that the deceased had died. The accused stated that when he pointed out the jeans at his house, no one showed him the jeans. He voluntarily pointed out the jeans. The accused said after he disarmed the deceased he could not throw the knife away because they were fighting. The accused stated further that he does not know how the deceased got stabbed because everything happened in a split second.

[24] The defence closed its case.

#### **Application of the law to the evidence**

[25] It is not in dispute that the deceased died as a result of a stab wound inflicted on him by the accused. The accused pleads self-defence. It is also not in dispute that the accused confessed to killing the deceased. The accused further admitted to Mr Dladla that he had accidentally killed the deceased. What is in dispute is whether the accused acted in private defence when he inflicted the fatal injury on the deceased. In this matter there are no eye witnesses.

[26] The Crown submitted that the accused did not act in self-defence. It is the submission of the Crown that when the accused stabbed the deceased he was not in danger of death or serious injury at the hands of the deceased because



the deceased was drunk and was not armed. This submission is not supported by the evidence before Court. The Crown did not lead evidence negating the version of the accused that the deceased was armed and attempted to stab the accused before he was disarmed by the accused who subsequently stabbed him. The law and procedure when an accused pleads private defence is settled. The onus rests on the Crown to disprove that the accused acted in private defence beyond reasonable doubt<sup>1</sup>. The Crown did not lead any evidence discounting the version of the accused that he acted in private defence when he stabbed the deceased.

[27] The accused bears no onus to convince the Court of the truth of any explanation he gives. All that is required of the accused is to give an explanation-where he chooses to do so- that is reasonably possibly true; nothing more and nothing less.

[28] In this matter I am of the view that the accused acted in private defence when he used force to repel an unlawful attack which had commenced at the instance of the deceased. It has not been disputed that the deceased was the aggressor; that the accused and the deceased fought and the accused was overpowered by the deceased; that the deceased sat on top of the accused and further strangled the accused while he used his knees to press the accused to the ground. The accused was justified to stab the deceased in order to protect his own life in the circumstances.

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<sup>1</sup> *Bhutana Paulson Gumbi v Rex* Criminal Appeal Case No: 24/2012

[29] For these reasons, the accused is acquitted and discharged.



M. S. LANGWENYA

**JUDGE OF THE HIGH COURT**

For the Crown:

Mr M. Dlamini

For the Defence:

Mr Busizwe Dlamini