

IN THE COURT OF APPEAL OF SWAZILAND

CRI. CASE NO. 77/96

In the matter between

CHRISTOPHER N. DLAMINI APPELLANT

Vs

REX RESPONDENT

Coram

Kotze, JP

Tebbutt, JA

Browde, JA

For Appellant In Person

For Crown Mr. M. Nsibandé

JUDGMENT

(22/09/97)

TEBBUTT, JA

The appellant was convicted by Dunn, J in the High Court of murder with extenuating circumstances and sentenced to five years imprisonment. He now appeals to this Court against his conviction and sentence. The charge arose out of an incident on the 22nd December, 1995 in a public bar known as Lozindonga Public Bar in Manzini. At this place and time the deceased Linda Sithole was stabbed twice one wound involving his liver and the other his heart. He died from

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the two stab wounds. The Crown case was that it was the appellant who had stabbed the deceased causing his death. The appellant said he had not stabbed the deceased and he repeated that before this Court today.

The facts very briefly are that the accused and a number of his friends had been drinking beer and had gone off to Lozindonga Public Bar arriving there at about 6.00 p.m. on the day in question.

According to the Crown witnesses and particularly one Themba Buthelezi three security guards in uniform entered the bar shortly after the appellant had got there. One of the girls in the party started talking to one of the security guards and the appellant's brother one Makhosi did not take kindly to that. This led to an argument between the deceased and Makhosi. A second argument developed when it was alleged by Makhosi that one of the members of the appellant's party had tramped on the deceased. According to Themba Buthelezi Makhosi got hold of the deceased and pulled him out of the bar and several people including the appellant followed the two men who had then started fighting by exchanging blows outside. Themba's evidence was this that he suddenly noticed that the appellant had a knife in his hand and he saw the appellant stabbing the deceased twice in the region of the

chest. The deceased fell down.

One of the guards, one Joe Masinga who is PW2 has said the appellant first stabbed the deceased and then stabbed another security guard before coming back to stab the deceased for the second time. And the third Crown witness PW3 who is Zodwa confirmed the quarrel between Makhosi and the deceased leading to the first fight outside the bar. This witness said she did not see the knife in the appellant's possession but she saw the appellant deliver a blow at the deceased and the deceased fell down. The appellant said that he was drunk by the time that they got at Lozindonga Bar. He went to relieve himself in the toilet and he then heard that

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Makhosi, his brother, was involved in a fracas outside. He said he followed these people out of the bar where he got hold of his brother trying to intervene in the fighting. He said he was assaulted by these men. He denied that he was carrying a knife and he denied having stabbed the deceased. It is significant however that the defence had not particularly challenged the evidence of the crown witness and particularly that of Themba regarding the stabbing. And indeed at the conclusion of the crown case the appellant's attorney tendered a plea of guilty of culpable homicide which the Crown could not accept. Asked why he had done that the appellant said that the Attorney had told him that he should plead guilty of culpable homicide. The matter goes further, however, but that during the course of his evidence the appellant was asked by the learned trial Judge whether or not he had stabbed the deceased but he indicated that there were many things that he was not able to remember about the events of the evening. Asked about this by the trial Judge, he said this: "The truth is that I was drunk and therefore I am unable to remember some of these things". The learned Judge then asked him: "Did you stab the deceased or is it that you do not remember doing so?" He then said, "I cannot say My Lord whether I stabbed the deceased or not because I was very drunk." In the light of this and in the light of the evidence of Themba Buthelezi who the learned trial Judge believes, it is clear to this Court that it was the appellant who stabbed the deceased. He was asked about the knife which he denied having carried. He said that he usually carries a knife when he wants to use it but he didn't carry it on that day. The learned trial Judge then asked him, "but one Crown witness said he saw you with a knife and you stabbed the deceased, what do you say to that?" His reply was - "I do not remember".

He was then asked by the Judge, "can you dispute that?" He then said -" I cannot dispute it because I do not remember".

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It is quite clear to this Court certainly to me that the appellant was trying to mask his participation in this even by his alleged drunkenness. The appellant has said in his argument before this Court that the witness Themba Buthelezi and the witness Zodwa Dlamini contradicted one another and that there were discrepancies in their evidence. There is in fact no discrepancy because both of them said they saw a stabbing motion. It was merely Zodwa Dlamini who said that he did not see the knife in the appellant's possession. He also said that Themba Buthelezi could not have seen what was happening because it was dark where the fight took place and it was raining at the time. The objective fact is that the deceased was stabbed twice and Themba Buthelezi says that he saw the appellant stabbing the man twice. The appellant also criticises the fact that the one security guard who Buthelezi says was also stabbed was not called as a witness. The name of this man was Ntshalintshali. The fact that this man was not called does not detract from the very positive evidence which was given by the other Crown witnesses which all completely implicate the appellant.

There is in my view no merit whatsoever in the appeal against the conviction and that it must be dismissed.

The appellant has also appealed against the sentence saying that it is too severe. As I indicated that it is one of five years imprisonment for murder with extenuating circumstances. There is no misdirection whatsoever on the part of the learned trial Judge in so far as the sentence is concerned. In fact I would agree completely with what he said in regard to the sentence imposed. The learned trial Judge said there is no doubt whatsoever that there are far too many cases people being killed in this country with knives for the most trivial and ridiculous of reasons. He said far too many people are carrying

knives about with them for no useful purpose and combine

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that with drinking, the involvement of some young girls followed by argument and then the knife is used with fatal consequences. The learned Judge said that the point should be driven home to the public that the carrying of knives is not going to be tolerated by the Courts. Here a man's life has been taken for no apparent reason whatsoever save for the fact it has been taken by the people concerned and that a fight had developed between the appellant's brother and the deceased. The learned trial Judge took everything in the appellant's favour into account, he said that he is a young man, he had been employed up to then and he was a first offender. The learned Judge said "I will impose what I consider to be a lenient sentence for this kind of offence." And I agree this sentence was indeed a lenient one and there is no reason whatsoever for this Court to interfere with it.

In the result the appeal against both the conviction and the sentence are dismissed and the conviction and sentence are confirmed.

P.H. TEBBUTT, JA

I AGREE

G.P.C. KOTZE, JP

AND SO DO I

J. BROWDE, JA