

IN THE COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE

CRIMINAL APPEAL NO.28/97

In the matter between:

THE KING RESPONDENT

vs

ZAYIZOLO S. DLAMINI APPLICANT

CORAM

: SCHREINER JA

: LEON JA

: STEYN JA

FOR APPELLANT : MR M. MAMBA

FOR RESPONDENT : MISS M. LANGWENYA

JUDGEMENT

Steyn JA

Appellant, despite his plea of not guilty on a murder charge, was duly convicted by Dunn J in the High Court. The facts of the matter are summarised by Dunn J in his judgement and it would be convenient to refer to that summary also in this judgement.

The learned judge after referring to the matter that was the cause of the dispute which later arose between the appellant and the deceased, that is the implication of the deceased's nephew Jabulani Dlamini in the theft of certain cassettes, set out the circumstances in which the dispute developed between the appellant and the deceased in the following terms:

He says a heated exchange between the accused and the deceased developed. Both men removed their wrist watches and prepared themselves for a fist fight. They were, however, separated and the deceased was pushed into one of the cooking huts. The accused left for his homestead which was nearby. He returned after a while and he is said to have called for the deceased and passed comments. His comments were to the effects that there would be a funeral at that homestead at

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which salads would be eaten. The deceased, according to the Crown witnesses, came out of the cooking hut and walked towards where his brother one Babaza was seated. The Crown case deposed to by four witnesses was to the effect that the accused went after him and before he could sit down next to his brother, the accused got hold of him by the back of his jacket. The deceased turned around and the accused produced a knife and stabbed him on the left side of the chest.

The appellant's version of the events differed diametrically from that of the Crown witnesses which I have just summarised by repeating the summary of the learned presiding judge. On his evidence it

was the deceased that was the aggressor, that a knife was fetched and given to the deceased, that the latter attempted to stab him (the appellant) but that he managed to dispossess him of the knife and in self-defence stabbed the deceased to death.

Mr Mamba who appeared on behalf of the appellant submitted that there was a misdirection in the judgement of the learned presiding judge. He said that the judge committed the cardinal error of approaching the evidence in the following manner: That is -I believe the Crown witnesses and therefore I disbelieve the witness for the defence. I must say although the judgement is a very brief one, we don't read it that way. The learned judge analysed the evidence of the four Crown witnesses and whilst it is correct that he make certain strong credibility findings, he nevertheless evaluated the evidence of the appellant, he says the following concerning his evidence.

"The accused's evidence is, in my view, totally false and a weak and belated attempt by him to try and explain a way that telling evidence given by the Crown witnesses". Concerning the evidence tendered on behalf of the Crown, he says that the four witnesses struck him 'as honest and reliable witnesses'. I must say that on the reading of the record Mr Mamba certainly cross-examined all four witnesses most competently and it is difficult to believe that a conspiracy to manufacture evidence of the kind that would have had to be manufactured, could possibly have occurred. The conspiracy theory, according to Mr Mamba, was given some cogency by virtue of the fact that certainly three of the Crown witnesses were in some way or the other related to the deceased.

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However, PW3, Albert Dlamini is a neighbour of the accused and whilst some suggestion was made that he gave false evidence in order 'to protect his friend', there was nothing to sustain this contention and certainly on the reading of Dlamini's evidence I could find nothing in it which is either improbable or unworthy of credence. It is very difficult for a court on appeal where there has been a proper evaluation of the credibility and reliability of a witness who has testified before the court a quo to interfere with that court's finding. It is my view that no reasonable grounds exist in this case for interfering with the reliability and credibility findings of the court a quo.

Finally, I point to the fact that Dunn J quite rightly, in my view, refers to certain evidence concerning the knife used in the attack and the unsatisfactory explanation which was tendered by the appellant why he retained the knife with which he stabbed the deceased allegedly as a potential exhibit in the case that might be made against him, and that it was still found in his possession at the time that he was arrested by the police. For these reasons I am of the opinion that the appellant was correctly convicted by the High Court, and that his conviction on a charge of murder should be sustained. Mr Mamba, in my view, quite rightly abandoned the appeal against the sentence because it certainly cannot be suggested that the sentence was startlingly inappropriate. For these reasons the appeal is dismissed and the conviction and sentence are confirmed.

J.H. STEYN. JA

I agree :

W.H.R. SCHREINER JA

I agree :

R.N. LEON JA

Delivered on this 25th day of September 1997.

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