IN THE SUPREME COURT OF SWAZILAND

HELD AT MBABANE

JUDGMENT

Criminal Appeal Case No: 16/2014

In the matter between

MANDLA ERIC MKHONTA **Appellant**

And

REX **Respondent**

Neutral citation: Mandla Eric Mkhonta vs Rex (16/2014) [2014] SZSC 42 (3 December 2014)

Coram: M.M. RAMODIBEDI CJ, MOORE JA and LEVINSOHN JA

Heard: 3 NOVEMBER 2014

Delivered: 3 DECEMBER 2014

Summary: *Appeal on sentence - 10 years imprisonment for attempted murder a female stabbed with assegai - sentence appropriate; appeal dismissed.*

JUDGMENT

LEVINSOHN JA

1. The Appellant was convicted by the court a quo of the crime of attempted murder. The court found that he had stabbed the complainant a female with an assegai in the abdomen causing, what was described in the medical evidence, as a serious and apparently life threatening injury. The court inferred that the Appellant must have subjectively foreseen and appreciated that his action involved a risk to life and he was recklessness as to whether death ensued or not. Thus the *mens rea* element of *dolus eventualis* necessary for a conviction of attempted murder was established.

2. After considering both the personal mitigating factors pertaining to the Appellant as well as the aggravating circumstances surrounding the commission of the crime, the Court sentenced the Appellant to undergo 10 years imprisonment. The learned Judge recorded that he had taken into account that the Appellant had been in custody awaiting trial for a period of 3 months and that the sentence imposed fell to be reduced by that period of time. In argument before us the Appellant informed us that the applicable period is in fact 8 months. I will return to this aspect later in this judgment.

3. When the appeal was called Mr. Manica announced that he appeared on behalf of the Appellant. We understood him to assert that he wished to contest both the conviction and the sentence. When it was pointed out to him that the grounds of appeal dated 31 March 2014, and which incidentally,

he personally had drafted, were confined to challenging the sentence only, he sought leave to withdraw as the Appellant's representative. The Appellant thereupon presented his case in person.

4. The Appellant submitted that we ought to substantially ameliorate the sentence imposed by the *court a quo*. Essentially, his argument in support of a reduction was based on his own version of the events on the day in question.

5. There were two diametrically opposed versions before the *court a quo*, that of the two principal Crown witnesses and that of the appellant. The court accepted the version of the former and rejected the latter's as false beyond a reasonable doubt.

6. It follows therefore that the appeal before us must be considered against background of the *court a quo's* principal findings of fact, which I summarise briefly hereunder.

7. On the 27th of June 2010 the appellant arrived in an intoxicated state at the complainant's homestead. He demanded to speak to the complainant's husband (Shongwe). The latter is a traditional healer and he had treated the appellant some time before. The complainant called Shongwe. An argument broke out between the two of them. Shongwe went back into the kitchen area of the homestead leaving the appellant outside. In the meantime the complainant walked back to her house. Before she entered the house she saw the appellant leaving the house carrying a TV set and a spear. Both items had been in her house. The complainant then raised an alarm whereupon the appellant stabbed her with the spear. The medical evidence revealed that the blade had penetrated deep into the left side of the abdomen exiting in the small of the back. There was copious bleeding.

The injury was a serious one requiring surgery. The complainant still suffers ongoing disability from the effects of the stab wound.

8. In my view the *court a quo* did not misdirect itself nor did it apply an incorrect principle. The court correctly characterised the crime as serious and imposed a sentence of imprisonment which was appropriate and within the acceptable range for a crime of this nature. Furthermore I find no marked disparity between the sentences imposed a quo and the one I would have imposed had I been sitting at first instance.

9. It follows that there is no basis upon which this court can interfere and accordingly the appeal is dismissed. Counsel for the Crown has indicated that the Appellant had in fact been incarcerated for period of 8 months awaiting trial.

The Registrar is directed to amend the warrant committing the Appellant to prison dated 12th March 2014 to reflect the following:-

"Ten (10) years imprisonment. Eight (8) months spent in custody awaiting trial to be taken into account."

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P.LEVINSOHN, JA
JUSTICE OF APPEAL

I AGREE

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M.M.RAMODIBEDI
CHIEF JUSTICE

I AGREE

_____

S.A. MOORE, JA
JUSTICE OF APPEAL

For the Appellant: IN PERSON

For Respondent: MR MACEBO NXUMALO
D.P.P. CHAMBERS