



IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Criminal Appeal Case No.35/2014

In the matter between:

SIBONISO CASPER MASUKU

Appellant

And

REX

Respondent

Neutral Citation: Siboniso Casper Masuku v Rex (35/2014) [2016] SZSC 59
(30 June 2016)

Coram: **R. CLOETE AJA, K. M. NXUMALO AJA and M.
LANGWENYA AJA**

Heard: **16 MAY 2016**

Delivered: **30 JUNE 2016**

Summary: Criminal Procedure – Conviction of Murder – Self defence – Sentenced to 18 years – Appeal against conviction and sentence – postponement – No appearance of Counsel for appellant – Matter postponed to next session.

JUDGMENT

M. LANGWENYA AJA

[1] The appellant was indicted for murder it being alleged that on or about 20 November 2008 and at or near Mhlosheni area the appellant unlawfully and intentionally killed Magwaza Bhembe.

[2] The appellant appeals against conviction and sentence.

[3] Against conviction the appellant contends that the Court *a quo* erred:

- a) In finding that the appellant was the aggressor in the altercation that culminated in the death of the deceased;

- b) In placing reliance on contradictory evidence by PW1 and PW5;
- c) In not taking into account evidence which was elicited under cross examination; which evidence was in favour of the appellant;
- d) In that the appellant was acting in self defence and in defence of a third party when he hacked the deceased with a bush knife.

[4] Against sentence, the appellant contended that the Court *a quo* meted out an inappropriate sentence in the circumstances.

[5] When the matter came before court for hearing, Counsel for the appellant was not present in court. The Court was informed by the Assistant Registrar that Mr. Jele, the counsel for the appellant was seen earlier in the court precincts in casual wear.

[6] Counsel for the Respondent Ms. Matsebula was present before court. She had no objections with the matter being postponed to the next session in the absence of the legal representative of the appellant.

[7] There being no appearance on behalf of the appellant, the matter was accordingly postponed to the next session.

M. LANGWENYA AJA

I agree _____

R. CLOETE AJA

I agree _____

K.M. NXUMALO AJA

For Appellant: No appearance

For Respondent: Ms. E Matsebula