

IN THE HIGH COURT OF SWAZILAND

CRIMINAL TRIAL NO.201/95

In the matter between:

REX

VS

THEMBA METHULA

CORAM : J.M. MATSEBULA J

FOR THE CROWN : MR. D. WACHIRA

FOR THE DEFENCE : MR. L. HOWE

JUDGMENT

26/06/96

The accused stands charged with the crime of murder. The allegation being that on the 7th October 1995 at Dubazi area in the Shiselweni District the said accused did unlawfully and intentionally kill Dumsani Matsebula The accused pleaded not guilty to the charge and was represented by Mr Howe throughout the trial.

The Crown then called the evidence of PW1 Sifiso Sithole who stated that on the date in question he was at a homestead of one Ntethe Khumalo where they were drinking with other people. The deceased was amongst those present it was PW1's evidence that at some stage accused who was with his girlfriend noticed that one of the patrons one Chicco spoke to his girlfriend. Accused took

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exception to this and started quarreling with the said Chicco. Deceased had then remonstrated by a way of intervening between the accused and the said Chicco At some stage the people who were in the house started moving out. In the process as they were moving out the deceased was stabbed according to the witness by the accused The witness stated that this happened in the process of the deceased also moving out of the hut. He also stated that they gave chase to the accused who fled and they failed to catch him.

Mr. Howe who represents the accused challenged the witness about the position of or the order of the people who were moving out of the hut. And also stated that his instructions were that the accused at the time that the deceased sustained the injury, he was standing outside standing with one Ntethe Khumalo.

Then the Crown also led evidence of Thabsile Maureen Luthuli who also gave evidence substantially along the lines that PW1 had given evidence. I say substantially because the question of the quarrel by the accused with the said Chicco over the girlfriend was also mentioned by this witness as was the case with PW1. She also stated that it was in the process that the deceased was going out when he received the stab wound. She said she had seen the deceased coming back

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with his hand over his chest and she saw blood and stated further that the people went out and gave chase to the accused.

Then there was also the evidence of PW3 Richard Mfana Msibi. He was also one of the patrons at the homestead of Ntethe Khumalo. He stated that when he arrived the liquor had run out but he also stated that he had seen the accused and deceased exchange words when the deceased explained to accused that he should not quarrel with Chicco over a girl

There was also the evidence of PW4 Moses Simelane who had effected the arrest on the accused at his homestead.

The Crown also led the evidence of PW5 Dr. R.E. Reilly who handed in exhibit 'A which is the autopsy report.

Also led by the Crown was PW6 Sibongile Khumalo who testified that she and others conveyed the deceased to hospital after he had been injured but that the deceased had died before admission at the hospital and consequently he was admitted at the mortuary. She stated in her evidence that deceased had not received further injuries from the point of scene of the crime to the hospital or mortuary.

That was the evidence by the Crown

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The defence then called the accused his defence. He admitted having been present at the homestead of Ntethe Khumalo but denied that there was a fight between him Chicco over his girlfriend. He stated that at one stage he had gone out to pass water, he delayed outside for sometime as he was outside he was with the host Ntethe Khumalo and he and Ntethe Khumalo stood outside watching some people who were dancing inside While standing outside suddenly he and Ntethe Khumalo saw a boulder which was thrown by one of the patrons which fell in-between them. He then noticed people coming out and started giving chase at him and wanting to beat him. He told the court that he fled and was subsequently arrested at his homestead by the witness PW4.

At his homestead his girlfriend had arrived and complained that she had been beaten by the people who were at Ntethe's homestead. That was the evidence in short of the accused.

The court then in terms of Section 199 (1) (2) of the CRIMINAL PROCEDURE OF THE EVIDENCE ACT called the witness Ntethe Khumalo himself. It is not clear why the Crown did not call this witness as he was the person at whose homestead this took place. His evidence on the main corroborated that of the Crown. He totally denied what the accused had told the court that he and the accused had been

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standing outside watching people dance when a boulder was thrown between them. He confirmed the evidence of other Crown witnesses that once the deceased was stabbed the accused started fleeing and that he the witness had seen the accused with a knife. He says in the attempt to grab hold of the accused he had fallen over a ditch that the accused had jumped over him and it was at that stage that he could clearly see that the accused had a knife.

The defence through Mr. Howe had addressed the court and argued that there were discrepancies about where one witness was standing and what happened first and the sequence of the happenings

there but the court views this as very insignificant in the light that when things are happening witnesses are not in the habit of giving the order of the sequence exactly as each and every witness say.

Mr. Howe also addressed the court that the Crown had not proved the case beyond reasonable doubt because of these discrepancies.

The court is very much aware that there is no onus resting on an accused person but that the onus always rests on the Crown to prove its case beyond reasonable doubt. To this end the court refers to the case of REX VS DIFFORD 1937AD and the court reads at 373, I quote:

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"No onus rest on the accused to convince the court of any truth of any explanation which he gives. If he gives an explanation even if that explanation is improbable the court is not entitled to convict him unless it is satisfied not only that the explanation is improbable but that beyond any reasonable doubt it is false. If there is any reasonable possibility of his explanation being true then he is entitled to his acquittal."

To this the court would also want to define the very much used phrase by, especially defence counsel when applying for an acquittal, a phrase which was pronounced by Lord Danning which reads as follows

"It need not reach certainty but it must carry a high degree of probability. Proof beyond reasonable doubt does not mean proof beyond a shadow of doubt. The law would fail to protect the community if it admitted fanciful possibility to deflect the cause of justice. If the evidence is so strong against the man he has to leave a remote possibility in his favour which can be dismissed with a sentence or of course it is possible but not in the least probable - the case is proved beyond reasonable doubt but nothing short of that would suffice."

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The court is satisfied that the Crown has proved its case beyond reasonable doubt and the accused is found guilty as charged.

J. M. MATSEBULA

JUDGE