

IN THE HIGH COURT OF SWAZILAND

CRIM. CASE NO. 46/97

REX

vs

BONGANI VUSI GAMEDZE

CORAM: S.B. MAPHALALA A J

FOR THE CROWN: MR L. NGARUA

FOR THE DEFENCE: MR MAHLALELA

JUDGEMENT

(23/09/97)

The accused is charged with having murdered Niki Dlamini, at Nsingizini on the 17th February, 1997 by stabbing him with a knife.

The Crown bears the onus and burden of proving the charge beyond reasonable doubt.

It is not in dispute that he died as a result shock and haemorrhage consequent to a stab injury. The post-mortem report, which was admitted by consent, describes (inter alia) an incised penetrating wound (2cm x 1cm) over the right side of the front of the chest. The chest wall was penetrated through the 1st intercostal space. Underneath the upper lobe of right lung was penetrated through and through. It also describes another incised wound over the outer border of the back of the right knee joint.

The Crown called six witnesses to prove its case.

The first crown witness (PW1) Ndweni Nkosingiphile Dlamini told the court that on the 17th February, 1997 at about 17.30hrs he met with the accused who is well known to him at "a drinking place", the accused bought "maganu" local beer. At about 18.00hrs the deceased joined the binge. The accused threatened that he could stab all persons drinking beer, and that no one should leave. The accused opened an okapi knife. The knife was brown in colour and its blade was about 8 centimetres. They pleaded with the accused to keep calm. The accused then started to force a certain Mfanukhona Sihlongonyane to drink maganu. The deceased intervened by pleading with

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the accused to leave Sihlongonyane alone. Later on, Sihlongonyane asked the deceased that they should leave and go home. Later this witness along with Sonto Masilela left followed by the accused.

After a while the accused left them and later came back and told him that he had stabbed the deceased. The accused showed him where he was stabbed by the deceased on the hand. The witness learnt on the 18th February, 1997 about the death of the deceased.

The Crown then called (PW2) Patson Dlamini. He told the court that he knew the accused. On the day

in question he was also participating in this maganu drinking spree. Accused would open a knife and said no one should leave before they had finished the brew. Thereafter he left the scene to go home with others. The accused person came to them running and told them that he had stabbed the deceased. This witness told the court that the quarrel between the accused and the deceased started when accused wanted Mfanukhona to participate in the drinking. After the stabbing he went home and heard the following day that the deceased had died.

The Crown then called its third witness (PW3) Sonto Masilela. Her evidence corroborates the evidence of both PW1 and PW3 in all material respects.

The Crown then called (PW4) Fezi Gamedze who is accused father. The witness told the court that on the 18th February, 1997 the accused approached him at 5.00am and told him that he was fighting with a person the previous night and he stabbed him. PW4 then took the accused to the police station.

The Crown then called (PW5) Mfanukhona Sihlongonyane. He told the court that he was present during the drinking spree but he did not drink at all. He does not drink liquor. The accused person was drinking with the others. Accused would stand up and throw stones aimlessly. He kicked him on the feet. After he had kicked him he told the deceased to come along with him to go home. The accused said that they will not go home until the liquor was finished. The deceased answered and said PW5 will not drink because he does not drink. The accused then held PW5 by the arm. He got loose from accused's grip and he told the deceased to come with him. They left the drinking place.

Along the way the accused came and stabbed the deceased. Accused did not say anything. They then ran away.

The last crown witness was the investigating officer in this case (PW6) 1502 Sub-inspector W. Dlamini. He told the court that on the 18th February, 1997 at about 7.20am he commenced investigating this case. He received a report from the accused and PW4 Fezi Gamedze. He cautioned the accused who directed him to his room where the accused handed over a knife.

At this stage the crown closed its case. The accused person then gave his testimony under oath being led by his attorney. The gist of his account is that he was present when the drinking was

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taking place. He was so drunk that he could not remember what happened. Before, during and after the deceased was stabbed. He heard the following morning from a neighbour that he had stabbed the deceased. The accused was subjected to a lengthy cross examination by the crown.

The court then entertained submissions by counsel for the crown and that representing the accused.

The court has reviewed the evidence in its totality and also considered the arguments advanced by both counsel.

It is common cause that the deceased died as a result of two stab wounds which were inflicted by the accused person. The question which confronts us is where the accused person had the required intention to commit the offence. It is my view that the crown has proved this element. PW2 and PW5 told the court that the accused person did assault the deceased without any provocation. The accused and the deceased were known to each other. They came from the same area. The evidence of the crown is that at the break of the drinking party PW2, Patson Dlamini and Mfanukhona took a different direction. Shortly after the accused together with Ndweni Dlamini and Sonto Masilela took one

direction. Accused left them went after the deceased. On catching up with him he stabbed the deceased. PW2 and PW5 scattered in fear and ran in different directions, shortly thereafter as per the evidence of Ndweni Dlamini the accused person walked up to them in a hurry and told PW1 that he had stabbed the deceased.

The crown showed in evidence that the knife which was used in the commission of this offence was pointed and handed to the officer by the accused.

The six crown witness in my observation, were reliable witnesses it was common amongst the crown witnesses's evidence that the conduct of the accused shortly before the stabbing was that of a bully, aggressive and intolerable conduct.

The accused person had voluntarily taken liquor and no one forced him to do so. It was clear in cross-examination by the crown that the accused could remember and it could not be said that he was acting under automatism. The accused remembered what happened before and after and during the commission of the offence. The accused cannot avail himself to the defence under the Criminal Liability of Intoxicated Persons Act No. 68 of 1938.

The demeanour of the accused person in the witnessed stand, to say the least, was totally unsatisfactory. The accused seemed to change his story several times to suit the occasion. He started to say that he could not recall anything about the stabbing because he was too drunk. Subsequently when he found himself caught up in the maze of cross-examination by the crown he changed his story. He said it was the deceased person who tried to kill him.

The defence made great play about the crown witnesses being drunk and therefore should not be trusted. There is no legal authority to the effect that a crown witness should not be believed

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because of his drunkenness.

The accused had a fight with the deceased prior to the stabbing. It is clear that the accused had a score to settle with the deceased. He stabbed the deceased to settle that score. Evidence before the court is that the deceased intervened when the accused attacked one of the revellers for not drinking the liquor. The accused stopped and was calmed down. However, after that he would stand up drawing his knife threatening the others. The accused was not happy that the deceased was able to control his aggressive temper.

In the circumstance I hold that the crown has proved its case beyond a reasonable doubt. The accused is found guilty of the crime of murder.

SENTENCE

The court has already found that in this case there are extenuating circumstances. The court heard that at the time the accused committed the offence he was 19years old and relatively a young man.

He showed immaturity in his actions that fateful day. The court has also taken into consideration that the accused had taken intoxicating liquor that day. This is also an extenuating factor (see S.V. Ndlovu 1965 (2) S.A. 692 (AD) and also Rex VS Vilakati 1977 - 78 S. I. R. 133).

However, the killing of another human being is a serious matter and the court will be failing in its duty

if it does not consider it to be so. The court has taken all the personal circumstances of the accused as submitted by his attorney. There are far too many cases of this nature where young men who abuse alcohol and then engage in knife fights where invariably people die. They then come to court shedding crocodile tears that when they committed these offences they were drunk. These knife fights seem to be some form of recreational activity in this country.

In the circumstance, I sentence the accused to five (5) years imprisonment and hope that this sentence will afford the accused a chance to reflect in prison on what brought him there. The sentence is backdated to the 18/02/97.

S. B. MAPHALALA

ACTING JUDGE