

IN THE HIGH COURT OF SWAZILAND

CRIM. CASE 63/97

In the matter between

THE KING

VS

JOSEPH MATSENJWA

CORAM : DUNN J.

FOR THE CROWN : MR. J. MASEKO

FOR THE ACCUSED: MR. B. SIMELANE

JUDGMENT

31ST JULY 1997

The accused pleaded not guilty to the murder of Nonhlanhla Sihlongonyane. It is common cause that the body of the deceased was found in the vicinity of the Caltex Garage at Mhlaleni area, on the 9th November 1996. The body was naked and two spots near it appeared to be the scenes of a struggle.

The body had injuries on it which according to the police officer 1599 Sub-Inspector Gamedze, who attended the scene appeared to have been caused by a blunt instrument. There was a cut wound between the thumb and the index finger of the left hand.

According to the post-mortem report prepared by the Police Pathologist Professor Rammohan and which was handed in by consent as part of the evidence in this case the deceased

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died as a result of "shock and haemorrhage consequent to multiple injuries." The injuries are set out in detail at pages 2 and 5 of the post-mortem report. In the pathologists' s finding, the injuries were" ante-mortem and fresh."

The accused has his parental home at Maphungwane in the Lubombo Region. His father died some years ago and his mother now lives with another man, as his wife at Maphungwane.

According to the accused's sister Ntombifuthi Sikhondze (PW1); the accused's sister-in-law, Nonhlanhla Vilane (PW2) and the accused's mother (Bikwaphi Myeni (PW3) the accused arrived at the homestead where the accused's mother was living on a Saturday at the beginning of November 1996. According to these witnesses, the accused had not been home for several years. The accused was in the company of a female person whom the accused introduced to the three witnesses by the surname of Sihlongonyane. The accused further informed the witnesses that the woman was his girlfriend.

Ntombifuthi and Nonhlanhla Vilane were later told by the accused's companion that her first name was Nonhlanhla. In the course of that week-end, the accused is said by these witnesses to have requested his mother to perform part of a ceremony by which the accused's companion was to

become his wife. According to the accused's mother the ceremony entailed dressing the woman in a traditional pinafore. This

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was said to have been done on the Monday. It was the accused's mother's evidence that she questioned the accused as to his ability to meet the other requirements of the marriage ceremony such as the payment of a beast to the bride's parents. The accused's response was that he would make a cash payment. The accused according to the witnesses left with the woman on the Tuesday, stating that she was not feeling well and undertook to return with her for completion of the marriage formalities.

The accused returned to the homestead on the following Saturday. He was alone. He arrived at the homestead at about 9.00 a.m. and found his mother and her husband about to leave the homestead.

It was the accused's mother's evidence that she enquired from the accused as to where the woman was and that he replied that he did not know whether or not she would be coming to the homestead. It further appears from the evidence that the accused wished to speak to his mother and that she told him to wait at the homestead as she had some matter to attend to.

Ntombifuthi and Nonhlanhla remained with the accused at the homestead. According to these witnesses the accused then stated that he had done that which he had always been talking about. He stated that he had accidentally injured LaSihlongonyane, which LaSihlongonyane the two witnesses understood to be the one they stated the accused had come home with on the previous Saturday.

According to Ntombifuthi the accused had stated over the previous week-end that he was not prepared to have a wife who was a

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prostitute and that if his wife became one he would kill her. It was Ntombifuthi's evidence that she specifically asked the accused as to what LaSihlongonyane had done that had caused him to injure her and that he replied that he had found her with other people who wanted her as a lover.

Ntombifuthi further asked the accused if LaSihlongonyane was still alive. The accused is said to have replied that he did not know whether or not she would regain consciousness at the place where he had beaten her.

The accused is then said to have told Ntombifuthi and Nonhlanhla that the police may come looking for him in which event they should say that he was in the area but that they did not know his exact whereabouts. They were further warned not to hand over any photographs of the accused to the police. There is some difference in the evidence of Ntombifuthi and Nonhlanhla as to what happened after the accused had referred to the possible visit by the police. It was Nonhlanhla's evidence that the accused then enquired as to where certain tablets for destroying weevils could be obtained. The accused then left the homestead. Ntombifuthi, on the other hand did not mention this. She stated that the accused simply left the homestead. It may well be that she did not give this detail because she was not asked about it. To continue, however, with the events as testified to, the two witnesses told the court that the accused returned to the homestead in the late afternoon. He requested drinking water from Nonhlanhla and later proceeded to Ntombifuthi's hut where he was to spend the night.

Later

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that evening it was discovered that the accused had taken a weevil tablet/s and was in a critical condition. He was unable to speak. Arrangements were made and he was conveyed to the Good Shepherd Hospital, Siteki, in a neighbour's motor vehicle.

The accused's mother, who had made the arrangements for conveying the accused to hospital told that court that she was concerned about the accused's conduct and that this led her to report the matter to the Siteki Police with the view that the accused be questioned about his attempted suicide.

This led to the accused being questioned and arrested by the Siteki Police. Contact was made with the Manzini Police who had by then commenced investigations into the death of the deceased whose boy had been found on the 9th November as earlier set out in this judgment.

According to 3561 constable Mamba, of the Siteki Police, when the accused was told about the investigations in Manzini he replied that he ran away from Manzini to Maphungwane after being attacked whilst in the company of his girlfriend, by some unknown persons. The accused was then taken by the Manzini Police. According to 2392 constable Mamba of the Manzini Police, the accused first led the police to his rented room at Mhlaleni in Manzini and from there he led the police to a spot where he said he had left the deceased. It is not in issue that this spot is the spot earlier testified to as the spot where the deceased's body was found. The police observed what appeared to have been struggle marks at that spot. The accused proceeded to

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pick up small pieces of sticks which he stated he had used in assaulting the deceased. These were exhibited in court. Allegations that the accused was tortured by the Manzini police were denied under cross-examination by constable Mamba.

The accused gave evidence on oath. He denied ever having taken a girlfriend to his home as testified to by his sister, sister-in-law and his mother. He denied having introduced anybody to these witnesses as being LaSihlonganyane. He denied having reported to his sister and sister-in-law that he had injured LaSihlonganyane. The accused's version of what transpired on Saturday 9th November is that he arrived at the homestead where his mother was living with the intention of asking her to assist him in obtaining a passport. His step father intervened and rudely informed him that he (stepfather) was not prepared to act as a messiah and attend to other person's problems. The accused states that he was so angered and troubled by his stepfather's intervention and attitude that he decided to commit suicide. That, he explained is how he obtained the weevil tablets which he ingested in his sister's hut.

He denied all knowledge of the deceased whose body was found in Manzini. He painted a picture of a strained relationship with his mother and other members of his family whom he maintained were bent on having him destroyed.

I have been addressed on the evidence before me. There can in my view be no doubt whatsoever as to the truth of the evidence given by the accused's relatives regarding his

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visits on the two Saturdays testified to. The evidence is quite clear and straight forward. The witnesses are mature and responsible relatives of the accused. I am satisfied that they have done no more than state precisely what transpired at the homestead on the days in question. The witnesses remained totally unshaken in the evidence in the face of the denials which it was stated the accused would make in his evidence. The suggestion that the evidence of the conduct of part of the marriage ceremony by the accused's mother was fabricated by the three witnesses is without any basis

whatsoever. It is without any hesitation that I accept as truthful and reliable, the evidence of these witnesses. It is quite clear that the accused did introduce LaSihlongonyane to his family and that he asked his mother to perform part of the customary marriage ceremony. I accept as satisfactory and truthful, the evidence that the witnesses were made to understand, in no uncertain terms, by the accused that the LaSihlongonyane he reported he had accidentally injured was the same LaSihlongonyane he had earlier introduced to them.

With that evidence in place, we then have the evidence of the finding of the deceased's body at Mhlaleni. Her body was identified by her father. The first three crown witnesses did not have the opportunity of seeing the body for purposes of stating whether or not that was the person the accused had previously introduced to them. It is quite clear that this should have been done. The failure to do so is, however, for the reasons that follow not fatal to the crown's case.

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The accused voluntarily led the police to where the body had been found. He admitted having assaulted the deceased to the police at the scene. The only interrence which can be drawn from this is that the person he admitted assaulting to the police is the same person that he was referring to in his report to the first two crown witnesses. His clear evidence to his sister, that he had injured and left LaSihlongonyane in the veld ties up with the place where the deceased's body was found. There is confirmation of his statement to his sister in the finding of the deceased's body and in his knowledge of the place where the body was found.

I have overall, found the accused to be a most unreliable and untruthful witness. He was most evasive under cross-examination and very quick in trying to untangle himself from sticky situations in which he had placed himself. I am satisfied on the totality of the evidence that his evidence is completely false and reject it as such.

I find the accused guilty as charged.

B. DUNN

JUDGE