

CRIM. CASE NO. 106/98

In the matter between

REX

And

NKOSINATHI MBONIBONI MATIBUKO

Coram
For the Crown
For the Accused

S.B. MAPHALALA – J
MRS. DLAMINI
MR. HLOPHE

JUDGEMENT
(24/11/98)

The accused is charged with the crime of culpable homicide. It is alleged by the crown that upon or about 6th December 1997 and at or near Sidvwashini area, Piggs Peak, the accused did unlawfully and wrongfully assault Ntethe Malindzisa and inflict upon him certain injuries which Ntethe Malindzisa died on the 8th December 1997 at Mkhuzweni Health Centre and thereby commit the crime of culpable homicide.

The accused pleaded not guilty to the offence. The evidence of the pathologist Dr. C. Rammohan was entered by consent as exhibit "A". The doctor gives the cause of death as "concussion of the brain".

The crown called four witnesses to prove its case.

The first crown witness is PW1 Live Timothy Malindzisa who told the court that he knew both the accused and the deceased. On the 6th December 1997 they all left a certain homestead where they had had drinks. The accused and the deceased were following him from behind. He could hear that the two were exchanging heated words one accusing another of giving him "inhlaba" (aloe) instead of "buganu" (marula beer). When he turned he saw that they were involved in a struggle. He saw the accused kicking the deceased. When he turned back he went to the deceased who was his brother and asked him what had happened and the deceased told him that he was kicked by the accused. PW1 tried to lift him up but he failed. He then went to get some boys to help him. When they got to him the deceased refused to come with them. The deceased finally arrived at home in the morning. The stick belonged to the deceased. PW1 was cross examined by the defence counsel where he admitted that it was the deceased who first assaulted the accused three times until the accused got hold of the stick and thereafter he saw the accused running away with the stick.

The crown then called PW2 Winister Ndzimandze who is the father of the deceased. He told the court that the deceased told him that he was kicked by the accused on the

chest and he fell on his back.

The crown then called PW3 Shasha Malindzisa who told the court that the deceased was his brother. He came in the morning and told him that his stomach was painful because he was kicked by the accused.

The crown then called PW4 2277 Sergeant Aaron Methula who is investigating officer in this case. He related how he arrested the accused and how he retrieved as exhibits the knopstick and a sandal belonging to the deceased.

The crown then closed its case.

The accused then took the witness stand being led by his attorney Mr. Hlophe where he gave a lengthy account of the sequence of events leading to the death of the deceased. The long and short of his story is that he was provoked by the deceased who was carrying a knopstick and there was subsequently an altercation between them. The deceased assaulted him with the stick and the bag of mealie-meal he was carrying fell down. He tried to defend himself with a bicycle pump. He tried to duck but was blocked by a thorny bush behind him. The deceased lashed at him and hit him under his arm and he was then able to take the stick from the deceased. He staggered backwards and they fought over the stick. The deceased advanced towards him and he tried to run away but was blocked by the thorny bush behind him. He was then forced to strike the deceased with the stick on the stomach to repel his advances. He tried to get off and took the deceased sandal and ran away. He was cross-examined at length by the crown, but in my view he maintained his story throughout.

The defence then closed its case.

The court then heard submissions from both sides. It is Mrs. Dlamini's view that the crown has proved its case beyond a reasonable doubt, the accused should have foreseen that using such a weapon would result in the death of the deceased. Mr. Hlophe on the other hand submitted that the crown has not proved its case beyond a reasonable doubt. The facts of the case establish a full case of self defence.

These are the issues before me. I have considered the evidence in its totality and the submissions made by both the crown and the defence. It is not in dispute that the accused and the deceased prior to the attack were engaged in an argument. It is not also in dispute that the accused did assault the deceased. However, it appears to me on the circumstances of the case that when the accused struck the deceased he was acting in self-defence and I do not see how in the circumstances the accused could have foreseen that using the weapon will result in the death of the deceased. The knopstick belonged to the deceased who had hit him three times before accused was able to dispossess him. The accused could not retreat backwards because of the thorny bush. In my view he struck at the accused to pave his route of escape. It is my considered conclusion that the accused is absolved from liability in this case on the grounds of self-defence.

I rule therefore that the accused is not guilty of the charge and is acquitted forthwith.

S.B. MAPHALALA
JUDGE