

IN THE HIGH COURT OF SWAZILAND

JUDGMENT

CRIMINAL CASE NO. 333/14

In the matter between:

THE KING

AND

BONGANI BAVUKILE DLAMINI

Neutral Citation: *Bongani Bavukile Dlamini vs The King (Case No. 333/14) SZHC (143) 2017*

Coram: MLANGENI J.

Heard: 14/9/16, 27/09/16, 26/10/16, 21/2/17, 20/3/17, 31/3/17, 6/6/17

Delivered: 1/08/17

Summary:

Criminal Law - accused charged with murder, having stabbed deceased twenty times using an okapi pocket knife.

Accused pleading self-defence, but his evidence of the alleged attack not reasonably possibly true, and that even if his account was reasonably possibly true he would clearly have exceeded reasonableness and proportionality, hence found guilty as charged.

Intention in the form of dolus eventualis discussed, as well the requirements of self-defence.

Accused sentenced to ___years imprisonment without the option of a fine.

JUDGMENT

- [1] On the night of 5th September 2014 a middle-aged school teacher, who had risen to the position of deputy head, was brutally attacked by his own acquaintance inside his own residence at Mvimbeke High School premises in the area of Ntondozi under Manzini Region. His assailant, a nineteen year old school leaver, inflicted upon his body twenty stab wounds using an okapi pocket knife, all within a period of about twenty minutes. Bongani Bavukile Dlamini now stands accused of murder, in that “upon or about the 5th September 2014 and at or near Mvimbeke area.... the said accused did unlawfully and intentionally kill one Siphon Mhlongo and did thereby commit the crime of murder.” He pleaded not guilty to the charge.
- [2] The Crown led the evidence of ten (10) witnesses while the defence relied on two - the accused himself and his blood sister Nombulelo Precious Dlamini. Much of the evidence on how the accused, the

deceased and one Khulani Dlamini came together on the 5th September 2014 and proceeded to Mvimbeke school teacher's residence in common cause. The evidence is that the accused and the deceased were acquaintances who had recently known each other. On the evening of the 5th September 2014 the deceased and the accused met at Mvutjini area where they both resided. The deceased then invited the accused to accompany him on a journey to the deceased's work station at Mvimbeke High School where the deceased had a residence that he used for purposes of work. The alleged purpose of the journey was for the deceased to collect certain material things from his official residence, after which they would return to Mvutjini. They were to travel in the deceased's motor vehicle. The accused agreed to accompany the deceased, but also requested to invite along his friend Khulani Dlamini. It appears that the deceased had no reservations or objections to Khulani Dlamini joining them, and the three proceeded on the journey. The deceased was driving, the accused was on the front passenger seat while Khulani Dlamini was at the back seat.

- [3] At the start of the journey the deceased promised to entertain his companions with alcoholic drinks, and true to his word the first round of drinks was purchased at Mvutjini. At the Corner Plaza, a short distance from Mvutjini, food and cigarettes were purchased. The food and the drinks were being consumed along the way, and it became necessary to purchase more drinks at different places during the relatively long journey from Mvutjini, past Malkerns, across Usuthu River to Mvimbeke High School. The types of alcoholic drinks were castle beer and savanna ciders.

[4] All three occupants of the motor vehicle were drinking, and it is apparent from the evidence that the deceased was the one for savannas while the two were having castle beer in large 750ml bottles. They arrived at Mvimbeke School premises in the early hours of the night. According to PW4, Zeblon Scheme Vilakati who worked as a security guard at the school and was on duty on the fateful night, the three arrived in the deceased's motor vehicle around the hour of 10:00pm. Deceased's motor vehicle came to a stop next to the block of houses where he resided. The boot of the motor vehicle was opened and some unspecified commodities were taken from the motor vehicle into the deceased's house. These commodities included alcoholic drinks because the drinking continued in the deceased's house, and in the aftermath of what transpired some alcoholic drinks remained unused in the deceased's fridge.

[5] It is not clear what level of intoxication the three companions were, but it appears from the evidence of PW4, the security guard, that when they arrived there was nothing of note. Under cross-examination he stated that they were chatting, and all three of them assisted each other in taking the shopping from the vehicle. Because a new school term was about to begin, it is likely that the goods included foodstuffs for the deceased, hence the reference by PW4 to "**groceries**".

[6] PW9 is Khulani Dylan Dlamini, a friend of the accused and was the third person in the trip to Mvimbeke. He was sitting at the back seat and he states that along the way the accused and the deceased were chatting like friends, sometimes touching each other "**the way males and females do**". At some point in time, says PW9, the deceased asked the accused to light a cigarette and puff the smoke to him so that the latter

could enjoy the smoke. There is no suggestion, however, that deceased ever lit a cigarette to smoke it. The cigarettes were being smoked by PW9.

[7] It is common cause that once inside the deceased's residence a music system was put on at loud level, and for a while the deceased unpacked his shopping while the two continued drinking. PW2, Nompumelelo Primrose Nkambule, was the deceased's immediate next door neighbour in the semi-detached block of houses. She described the deceased as someone who liked playing the music system loud and often sang along in his nice voice, his favourite band being '**Joyous**'. Although she worked with him she does not know much about his private life, and she had no idea that he consumed alcoholic drinks. Her evidence on the deceased's known way of life is corroborated by other witnesses. For instance in an answer during cross-examination PW3, Rogers Fana Tsikati who was a teacher at Mvimbeke High School, stated that he had no idea that the deceased drank alcohol. Similarly, PW5 - Fakazi Musa Tsabedze, a neighbour of the deceased at Mvutjini area, knew the deceased as a church goer and did not at all associate him with alcoholic drinks and the other forms of behaviour that was suggested to him during cross-examination.

[8] The totality of the evidence leads me to conclude that the deceased did not have a wife. At the age of thirty-nine years this is not by any means extra-ordinary. I also accept that his colleagues at Mvimbeke High School did not get to know his female companion, if he had any. This, again, is not extra-ordinary in view of the fact that the deceased had a fair bit of life away from the school surroundings, often being away on weekends and during school holidays. It appears that on these

occasions he would generally be at Mvutjini, his home area. He does appear to have been a private person.

[9] The evidence of PW2, Nompumelelo Primrose Nkambule, gives a clear and independent account of the commotion that took place in the deceased's residence, culminating in his injury and eventual death. In the night of the 5th September 2014 she was awoken by very loud noise which reverberated on the entire building structure. This noise was a combination of music from a music system, some banging against a wall and a loud scream from someone in pain saying "**ungigwazelani**"- why are you stabbing me? Some of the noise was like furniture being forcibly moved around in the deceased's residence. The noise was so scary that she ran to hide underneath the kitchen sink in her residence and called the emergency number 999 using her cellular phone. She also contacted other teachers on residence and alerted them that things were bad, they better remain within their residences.

[10] Whilst she was communicating with colleagues and at the height of apprehension "the deceased knocked at my door asking for assistance. I told him I was assisting him but did not open the door". In the meantime a colleague, Obert Sikhulu Dlamini who is PW1, was already with the deceased outside and the witness Nompumelelo Nkambule then opened her door. The deceased had blood all over the body, suggesting that he had multiple injuries. At that stage he was weak and had struggled to move from his residential unit to the door of witness Nompumelelo Nkambule who was the immediate next door neighbour. When Nompumelelo first saw the deceased he was sitting down. He said he was feeling cold, and the witness provided a blanket to cover the deceased. Frantic efforts were made to take him to hospital, which

was eventually achieved through the use of the deceased's motor vehicle. A few hours later, news came that the deceased had died even before he got any medical assistance at Mankayane Hospital.

[11] It is common cause that the deceased died as a result of stab wounds inflicted upon him by the accused person using an okapi pocket knife. He sustained no less than twenty stab wounds. This is supported by the evidence of Dr R.M. Reddy, the Police Pathologist, whose evidence was not challenged. He was paraded as PW8 and he handed in his post-mortem report by consent and it was marked as **Exhibit "D"**. Probably because of the multiplicity of the stab wounds and for the sake of brevity the doctor identified them in clusters 1,2,3,4,5,6,7,8,9 and 10. Some of these clusters each related to several stab wounds. To illustrate this I quote cluster 1 in full herein below:-

"1. Cut wound over scalp right parietal region 2.5 cm x 0.5 cm, occipital region centre 2cm x 0.7, left side occipital region 2.1 cm x 0.5 scalp deep present".

[12] In this cluster there are three different stab wounds, while in cluster 2 there is only one, being "contusion abrasion left eye outer aspect 2.5 cm x 0.4cm". The clusters were apparently determined by location, so that stab wounds around one area were described together in one paragraph. It is on the basis of counting the individual wounds that I have come to the conclusion that the deceased sustained twenty stab wounds. It is dreadful to imagine the pain that the deceased experienced before his demise. The doctor described this macabre incident as **"very rare"**. Of the twenty injuries, clusters 4 and 9 were

fatal. Cluster 4 was on the neck while cluster 9 was on the chest, lung deep, involving “muscle intercostal structures, pleura, lung upper lobe, angle sharp back to front pleural cavity contained about 900ml present”.

[13] The identity of the deceased is not in dispute, and it is also not in dispute that he died as a result of stab wounds inflicted by the accused person. The only issue for the Crown to prove is criminal intent either in the form of *dolus directus* or *dolus eventualis*. The Crown seeks to establish the latter.

[14] The circumstances of the deceased’s fatal injury are very unusual, in every respect. Other than the deceased, there were only two people inside the deceased’s residence at the material time – the accused and his friend Khulani Dylan Dlamini who was introduced by the Crown as PW9. Other than snippets of what is said to have happened along and during the trip from Mvutjini to Mvimbeke School premises, the court is largely guided by what allegedly transpired within the walls of the deceased’s residence. The evidence of both Dlaminis is that upon arrival at the school premises the two, together with the deceased, off-loaded shopping from the motor vehicle and proceeded into the deceased’s residence. The shopping included alcoholic drinks. Once inside, the drinking continued and music was played from a music system at blaring level. We already know, from PW2’s evidence, that the deceased enjoyed loud music, to the extent of singing along “**in competition**” with the music system. He was now in his house enjoying company and drinks. According to PW9 the television set was also put on.

[15] The court was told by both the accused and PW9 that after a while the accused needed to have a rest and was shown a bedroom adjacent to the sitting room where the three were interacting. There is a door leading from the sitting room to the bedroom that was used by the deceased. The accused proceeded into the bedroom and, according to him, he lay on the bed with the intention of taking a nap. At this stage the deceased and PW9 remained in the sitting room. The evidence of PW9, accused's friend, suggests that the time that the accused spent in the sitting room before asking to be shown a place to take a nap was quite short. I quote the relevant portion of his evidence.

“Once inside I asked to go to the bathroom. Music system was put on, deceased was unpacking the shopping. We had been drinking for some time. Bavukile wanted to go and lie down, we were to tell him when we were done with what we were doing. I remained in the living room. Deceased then went to check on Bavukile. Bavukile was in the bedroom...”

[16] The time lag is corroborated by the evidence of the accused who said that the deceased said to them they “should feel free, they would be leaving in a while, he was still checking out his house. After a while I asked him to allow me to lie down as I was tired and drunk.... He opened the door to the bedroom and said I could lie down. I placed myself on top of the bed. I was dressed. I was facing away from the door, on the edge of the bed, not the centre. The door to the room was open, deceased was at the kitchen doing something. I passed out”

[17] As I have alluded to above, I got the clear impression that the time between when the three settled in the house and when the accused wanted to lie down in the deceased's bedroom is pretty short. This, it appears, occurred while the deceased was still checking out his house, given the fact that he had been away during school holidays. I make this observation because it is unusual to want to relax in the bedroom of someone who is nothing more than an acquaintance and who, as will appear shortly, had earlier on allegedly been fondling your thighs and behaving in an amorous manner towards his own gender, the accused.

[18] PW9's account is that the deceased then went to check the accused in the bedroom, and that "**after a while Bavukile appeared stained in blood. I asked him what had happened. He did not answer**". The reality, therefore, is that the only account of what happened in the bedroom is that of the accused person. That is so because the other witnesses who had contact with the deceased and talked to him before he died have no inkling of what happened. All they got from him was that he had been stabbed by Bavukile, the accused. PW1, Obert Sikhulu Dlamini, did not ask the deceased why he was stabbed. PW2, Nompumelelo Primrose Nkambule, also did not ask the deceased why he was stabbed, her stated reason being that she viewed him with respect because he was her boss. PW3, Rodgers Fana Tsikati, was asked in cross-examination, like the others, whether he had asked the deceased why he was stabbed. His answer was that the deceased said that he did not know why he was stabbed by the accused.

DEFENCE CASE

[19] In his evidence the accused seeks to invoke the justification of self-defence, that he was being attacked by the deceased and acted in self-defence. According to him, the twenty stab wounds were inflicted in self-defence. Specifically, he avers that the deceased was forcing himself upon him for sexual purposes, that he was attempting to sodomise him. Because he was unable to ward him off, he stabbed him with an okapi knife that he earlier had in his pocket. A prelude to this grisly climax, according to the evidence of the accused and PW9, started during the drive from Mvutjini to Mvimbeke. The Dlamini friends both state that along the way the deceased behaved like someone who wanted to have sexual intercourse with the accused, in an amorous manner. It was said in evidence that he behaved in a **“girlish”** manner, whatever this means. More specifically it is alleged that he was caressing the accused’s thighs, at some point in time he asked the accused to light a cigarette, inhale the smoke and puff it to the face of the deceased while the latter was driving. It is alleged by the accused that he was initially reluctant to light up the cigarette, on the basis that he does not smoke, but he nonetheless did as asked. The evidence is that neither the accused nor his friend at the back seat made any significant reaction to this spectacle, both merely attributing this bizarre scenario to excitement. I asked the accused what crossed his mind upon this alleged unbecoming behaviour of the deceased. His answer was that he took it to be evidence of **“excitement as we were drinking.”** Again, when he was fondling the accused’s thighs the accused thought it was excitement.

[20] In the living room of the deceased nothing of significance happened, other than that the music and television were turned on, the music at a

loud level, the drinking and the deceased unpacking his stuff. As stated earlier on the transition by the accused to the bedroom appears to have been brief. The lone account of the accused regarding what happened inside the bedroom is just as brief, and this aspect is corroborated by PW9 who states that the deceased went to check on Bavukile in the bedroom, and **“after a while Bavukile appeared, stained in blood. I asked him what had happened. He did not answer...”**.

[21] The accused’s explanation of this savage and gruesome attack upon the deceased is the basis of his defence. He claims to have acted in self-defence. His evidence is that upon lying on the bed in the deceased’s bedroom he passed out. About 15 to 20 minutes later he felt someone holding him and caressing him on the backside and front. He says that it was like he was dreaming. He then awakened and asked the deceased what he was doing, whereupon - alleges the accused - the deceased said **“Baby, sewulele. I like your body my love ...”** The accused alleges that the deceased momentarily let go, smiling, but remained inside the room. The accused then remained lying on the bed, thinking that the deceased was joking as a result of alcoholic drink. After a while, goes the accused’s evidence, the deceased was back on the bed “fondling me, his shirt unbuttoned on the front up to the middle. I regained my senses and assumed that may be he behaves like that when he is drunk”. When the accused protested the deceased is alleged to have said “...friend, what is the disagreement about? I will buy more drinks. He then moved away from me. He was friendly and laughing”.

[22] The accused states that after the second attempt upon him he again fell asleep, only to awaken and find that his (accused’s) trousers were

pulled down half-way and his under trousers, colloquially referred to as bvd, was also pulled down. At this stage the accused claims to have protested strongly, but he did not leave the bedroom, only threatening to tell his friend PW9 that “you are this type of person.” Accused states that he then tried to escape but the deceased blocked the way to the door, pushed him back on the bed and came on top. I asked the accused why he did not call the assistance of his friend who was just in the next room and his answer was that PW9 would not have heard because of the loud music. Accused states that a struggle ensued and he was overpowered by the deceased who was apparently determined to sodomise him. He further states that he had an okapi knife in his pocket, and during the struggle the knife fell from his pocket, he then picked it up to scare the deceased off but the deceased was undeterred and tried to grab the knife from the accused. Accused states that as they tussled for possession of the knife the blade spontaneously opened and the deceased got stabbed on the front during the struggle, and was bleeding but did not stop charging at the accused.

[23] The evidence of the accused leaves it unclear whether the combat had developed into a fight at that stage, or that the deceased was still pursuing the alleged sexual mission. As I stated earlier, in the process the deceased was stabbed twenty times, according to my calculation of the sub-injuries. None of the combatants called for the assistance of PW9 who was in the adjoining living room. It is apparent that this is when the loud banging noise described by PW2 occurred and she, PW2, gives the only testimony of the deceased crying “why are you stabbing me?.” The okapi knife is part of the exhibits that were handed in by PW6, Detective Sergeant Patrick Mhlanga, and were collectively marked **“A”**. Because the *actus reus* is not in issue and the perpetrator does not deny the act, there is no need for me to dwell on the exhibits,

except to comment briefly on the T-shirt that the accused was wearing at the time. Other than blood stains, the T-shirt had two fairly large holes, one of which was on the right arm. The defence case is that the T-shirt was torn as a result of the physical struggle between the accused and the deceased. I accept that this is reasonably possibly true, but I cannot rule out the possibility that such holes could have been inflicted upon the T-shirt *ex post facto*, to create the impression of a two-way struggle. It will become apparent why, on the totality of the evidence of what happened in the bedroom, I cannot rule out such a possibility.

ONUS UPON THE CROWN

[24] In order to secure a conviction the crown needs to prove beyond reasonable doubt that the accused intended to kill the deceased. In our law it is settled that there are two forms of criminal intent in homicide cases. Direct intention is where the assailant decides and deliberately sets out to kill another. This is referred to as *dolus directus*. The other form of intention is *dolus eventualis*, and it occurs where the assailant has not consciously taken the decision to kill, but, his act or actions are such that death might result from such act or acts but he nonetheless carries on with such act or acts, reckless as to whether death results or not. In the case of **REX v ELLIOT MAMBA**¹ Fakudze J quotes with approval from the judgement of Leach JA². Where the Lordship said of *dolus eventualis*:-

“...a person’s intention in the form of *dolus eventualis* arises if the perpetrator foresees the risk of death

¹ [2016] SZHC 198, p28 -29

² The Director of Public Prosecutions v Oscar Pistorious, Criminal Appeal No. 96/2015

occurring but nevertheless continues to act appreciating that death might well occur, therefore ‘gambling as it were with the life of the person against whom it is directed.’”

[25] Similarly, in the case of **VINCENT SIPHO MAZIBUKO v REX**³, Hannah CJ, as he then was, said the following:-

“A person intends to kill if he deliberately does an act which he in fact appreciates might result in the death of another and he acts recklessly as to whether such death results or not.”

In the case of **REX v ELLIOT MAMBA**, supra, Fakudze J quotes Maphalala MCB as follows:-

“In determining....intention the court should have regard to lethal weapon used, the extent of the injuries sustained as well as the part of the body where the injuries were inflicted. If the injuries are severe such that the deceased could not have been expected to survive the attack and the injuries were inflicted on a delicate part of the body using a dangerous weapon, the only reasonable inference to be drawn is that he intended to kill the deceased ...”

[26] The case of the Crown is based on *dolus eventualis*, and I will proceed to deal with the matter on that basis. But before I do so I point out that the evidence in this case has significant pointers towards *dolus directus*. The accused was travelling on a social trip and in the company

³ 1982-1986 SLR 377 at p380.

of people that he knew well – one a school teacher who hailed from the same community and the other one a friend. He took with him a deadly weapon, the okapi knife. And then he stabbed the deceased twenty times, all within a fairly short space of time – twenty minutes or so. The stab wounds are all over the upper body – head, eyes, neck, chest abdomen and shoulder. There is no iota of evidence from the accused or from anyone else that the accused was hurt by the deceased.

[27] But because the evidence against the accused is overwhelming, the difference between *dolus directus* and *dolus eventualis* is inconsequential. Of the twenty stab wounds upon the body of the deceased, two were individually fatal, being clusters 4 and 9. The Police Pathologist, Dr R.M. Reddy described this incident as “**very rare**”. Given the multiplicity of wounds all over the body, the deceased could well have died from excessive bleeding, and all the witnesses who were at the scene had much to say about the bleeding.

[28] The accused person says that the deceased person was attempting to sodomise him and that he acted in self-defence because the deceased was persistent in his alleged quest, to the extent that he overpowered the accused on the bed and came on top of him, at that stage the accused’s trousers and underwear having been pulled half-way down by the deceased. He states that the deceased made three attempts to sodomise him, the last attempt being the one that led to the fatal confrontation.

DIFFICULTIES POSED BY ACCUSED’S ACCOUNT OF EVENTS IN THE BEDROOM

[29] In his account of events the accused has manifold challenges. On his own evidence the deceased was not armed. Whatever the deceased said or did to the accused he was friendly and laughing. According to the accused, the last attempt by the deceased was more determined than the earlier two attempts. He relates how there was a struggle between himself and the deceased, the latter forcing himself upon the accused and the accused trying to push the deceased away from him. Not one of them called for help despite that in the other room there was PW9. This fact alone does not do the accused's case any good, for it suggests that whatever may have been going on in the bedroom was not a perceived threat to either party.

[30] Assuming that the deceased did have the intention to sodomise him as alleged by the accused - and I am expressing no firm opinion on this - the accused, it appears, was not averse, certainly not to the extent of inflicting so many bodily injuries in defence of self. My understanding of the situation in the bedroom prior to the mysterious explosion is consistent with the fact that the alleged amorous behaviour of the deceased while driving was not a major concern to the accused or to his friend at the back seat. No one raised any real objection. And for the accused to transit into the bedroom so soon after arriving at the house, against the background of what is alleged to have been happening during the drive, suggests that he either expected what he alleges occurred or if it took him by surprise he nonetheless acquiesced to it. Otherwise he would have done the natural and instinctive thing to cry for help, even banging the door if need be. He did neither, and opted to inflict deadly injuries upon the deceased in a manner reminiscent of a scene in a horror movie.

[31] I ask myself whether the accused's version of events is reasonably possibly true. In asking myself this question I am mindful of the fact that the deceased is unavailable to give his version of events. I am also mindful of the fact that the version of alleged amorous behaviour of the deceased during the drive does not have genuinely independent corroboration, given that the accused and PW9 are friends and are the only survivors of this harrowing scenario. I am not persuaded that there was an act of attack by the deceased upon the accused. This is especially so because the deceased was not armed, and he is said by the accused to have been friendly and laughing during the earlier antecedents. So, what exactly changed? Regrettably, I can hardly hazard a guess, but I do conclude that the totality of the accused's account of events in the bedroom is not reasonably possibly true.

[32] But assuming that this account of events was reasonably possibly true, would he succeed in invoking self-defence? The law relating to self-defence is well-settled in our jurisdiction, and the constitution⁴ of the country has added its weight to it, as if that was necessary. According to Section 15 (4), use of force that results in loss of life is lawful where the force used **"is reasonably justifiable and proportionate in the circumstances of the case..."** In my view the Constitution has done nothing more than restate the well-articulated common law. The Supreme Court of Swaziland has stated the requirements of self-defence as follows⁵:-

31.1 The accused must have been unlawfully attacked and had reasonable grounds for thinking that he was in danger of death or serious injury at the hands of his attacker;

⁴ The Constitution of the Kingdom of Swaziland Act, 2005

⁵ See Siphamandla Henson Dlamini v Rex, Criminal Appeal No. 23/2013 at page 9

31.2 The means used in defending himself were not excessive in relation to the danger;

31.3 The means he used in defending himself were the only or least dangerous means whereby he could have avoided the danger.”

[33] Assuming that the friendly and laughing deceased who was unarmed did what he is alleged to have done the simplest and most instinctive reaction of the accused would have been to call for help. His friend was just in the next room. If the music in the living room was loud, he could have banged the door while shouting for help. Because the accused alleges that there were three successive attempts upon him, it should not even have got to the second or third. And certainly not to a stage where there was a struggle, the knife popping out of the pocket, the tug over the knife and the deceased being stabbed in front. Never mind the nineteen subsequent stab wounds.

[34] In this matter it is difficult to fully imagine the pain that the deceased endured prior to his death, and in a situation where he occasioned not the slightest injury to his assailant.

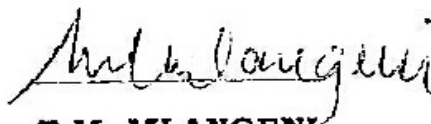
[35] The unavoidable conclusion that I come to is that even if there was an attack upon the accused in whatever form – I have already stated that I do not accept that this in fact happened – his reaction far exceeded the scale of reasonableness and proportionality.

ACCUSED’S ALLEGED INTOXICATION

[36] I make a brief reference to accused's alleged intoxication at the material time. It is common cause that the three had been drinking continuously for some time. However, in his evidence the accused did not attempt to make much out of this alleged intoxication. But even if he had done so, the fact that the drinking was voluntary places the defence of intoxication out of his reach.

[37] The evidence of DW2, accused's sister, was largely hearsay. She testified on things that were told to her by the accused, *ex post facto*. Where it was not hearsay it related to the character of the accused, that he had not hurt anyone before. This is of no assistance to the accused.

[38] I therefore find the accused guilty of murder as charged.



T.M. MLANGENI

JUDGE OF THE HIGH COURT

For the crown: Mr T. Dlamini

For the Defence: Mr B. Xaba

JUDGMENT ON SENTENCE

- [1] The crown has submitted that there are aggravating circumstances in this case, which, warrant that the court should mete out a sentence that takes into account the extra-ordinary cruel manner in which the deceased lost his life, the extent of loss to the deceased's family, his community and society at large.

- [2] In support of its submission the, crown led the evidence of the deceased's mother Martha Mhlongo, who is a retired teacher. This witness evidence reveals a close relationship that existed between her and the deceased, cemented to an extend by the fact that the deceased was the only child, out of three, who spent significant time at the parental home where the witness was otherwise alone. The two other siblings of the deceased do not live at the parental home. Despite the fact that the deceased, whose workstation was a long distance away, he came to see his mother regularly, even in the middle of the week.

- [3] The witness described the deceased as a loving, friendly person who had the heart of a child, often a peacemaker in the family and between family members and others. Although the witness is on a monthly pension, the deceased provided regular material support to her, and the witness discovered after the death of the deceased that he had been assisting a number of disadvantage children with their educational needs. He was an active church goer who had a keen interest in community work, including clean up campaigns.

[4] Understandably, this witness evidence is laden with sentiment and emotion, but through this I was able to discern that the deceased was a good and jovial person who was loved in the family and well respected at the school where he was deputy head. It is an irony of immense proportion that such a person would die in such a senseless and brutal manner. The extent of grief was such that some members of the family required counselling, for this is no ordinary case of murder. Referring to the multiplicity of injuries upon the body of the deceased, the police pathologist described the situation as **“very rare”**. These factors lead me to the conclusion that indeed there are aggravating circumstances in the matter.