

**IN THE HIGH COURT OF SWAZILAND**

**REX**

Vs

**POLOLO DLAMINI**

Criminal Case No. 89/2002

Coram

S.B. MAPHALALA - J

For the Crown

MR. S. FAKUDZE

For the Defence

MR. M. MABILA

**JUDGMENT**

17<sup>th</sup> August 2007

[1] In this matter when the indictment was read to the accused he pleaded not guilty that on the 20<sup>th</sup> June at about 09h00hours, Lugogo Sibandze S/M/A

60 years was at a certain homestead when the accused came and asked to talk to him. The deceased agreed to talk with the suspect a distance away from the homestead. The suspect took out a bush knife and chopped the deceased on the head and all over the body. The deceased fell down and shouted for help. He died on the spot and the suspect ran away.

[2] After the accused had tendered the above cited plea his attorney *Mr. Mabila* made an application in terms of Section 165 of the Criminal Procedure and Evidence Act No. 67 of 1938 which provides the following:

165 (1) If an act either of commission or omission is charged against any person as an offence and it is given in evidence on the trial of such person for such offence that he was insane so as not to be responsible according to law for his act at the time when it was done, and if it appears to the court before which such a person is tried that he did the act but was insane as aforesaid at the time when he did it, the court shall return a special finding to the effect that the accused did the act charged, but was insane when he did it.

(2) If a special finding is returned the court shall report to the Attorney General for the information of His Majesty and shall meanwhile order the accused to be kept in custody as a criminal lunatic in such place and in such manner as it directs.

(3) His Majesty may order such person to be confined during His pleasure in a place of safe custody.

(4) Notwithstanding anything in this section, in the case of such special finding by a magistrate, his finding shall be subject in the ordinary course to review by the High Court and the provisions of section 89 of the Magistrate Court Act, No. 67 of 1938, shall mutatis mutandis apply thereto.

(5) Any person in respect of whom a special finding has been made under this section shall have the same right of appeal or review as if he had been convicted of the offence with which he has been charged.

[3] Defence Counsel also referred the court to a letter dated the 24 July 2007 from the National Psychiatric Hospital to the Registrar of this court concerning the mental state of the accused person. In the said letter the good doctor opined that the accused person was mentally disordered at the time of the alleged offence. He is now fit to attend trial.

[4] In the statement of agreed facts by the parties the following is recorded:

(6) On the day proceeding the 20<sup>th</sup> June 2001, the accused started acting strangely.

(7) He was making a lot of noise, and he was digging into a rubbish pit as if looking for something. He also snatched porridge which was being eaten by a neighbour's dog from it and ate it.

(8) The following day he proceeded to a place where deceased was seating with other community members and hacked deceased with a bush knife several times.

(9) The accused has been examined by a psychiatrist who have confirmed that the ' accused was mentally disturbed when he committed this offence.

(10) The psychiatric report is handled in by consent as well as the post mortem report.

[5] It is in view of the above-cited medical opinion that this court is asked to invoke the provisions of the above-cited section of the Criminal Procedure and Evidence Act. Indeed, it appears to me that the rigours of the cited Section apply to the facts of the matter and I therefore I issue an order in the circumstances as follows:

1.The accused person is to b

direction from th



**S.B. MAPHALALA**  
**JUDGE**