



IN THE HIGH COURT OF SWAZILAND

JUDGMENT

Criminal Case No: 285/05

In the matter between

THE KING

And

JOSEPH MBHUDI DLAMINI

ACCUSED

Neutral citation: *The King v Joseph Mbhudi Dlamini (285/05) 2013*
[SZHC] 185 (3 September 2013)

Coram: **OTA J**

Heard: **20 August 2013**

Delivered: **3 September 2013**

Summary: **Accused charged with murder; application in terms of Section 165 of the Criminal Procedure and Evidence Act 67/1938, as amended, on grounds that Accused**

**was insane when he committed the offence,
application upheld.**

OTA J

Judgment

- [1] The Accused person Joseph Mbhudi Dlamini is charged with the offence of murder. The Indictment alleged that upon or about 21st August 2005 and at or near Mayangeni area in the District of Hhohho, the accused person did unlawfully and intentionally kill one Judith Dlamini.
- [2] When the Accused was arraigned before me he pleaded guilty to the offence charged. I however entered a plea of not guilty in appreciation of the seriousness and ramifications of the offence of murder with which the Accused is charged.
- [3] Learned Crown Counsel Mr Dlamini thereafter moved an application in terms of Section 165 (1) and (2) of the Criminal Procedure and

Evidence Act 67/1938, as amended, (CP&E), on grounds that the Accused was insane when he committed the offence.

[4] Ms Mazibuko who appeared for the Accused was not opposed to this application. The Crown to this end, urged a statement of agreed facts (exhibit A) which was signed and filed by the parties and which states as follows:-

“Statement of agreed facts

1. It is agreed between the Crown and the defence that this matter be dealt with under Section 165(1) and (2) of the Criminal procedure and evidence Act no. 67 of 1938.

2. It is further agreed that the following events took place on the 21st August 2005.

2.1 At around 0730 hours the accused was outside his house and he was a person who was destined for somewhere. The deceased came out of her house and went straight to the accused’s house. The accused then turned back from where he was going and asked deceased what she wanted from his house. The deceased replied that she wanted to take the bed the accused was using as it belonged to Sicelo’s (PW2) father who was outside watching as the events unfolded. The accused suddenly got angry and grabbed the deceased by the neck and she fell and he tried to throttle her and he then left her.

- 2.2 The accused proceeded to the kitchen and later came out and he was shouting at the deceased who was lying on the ground. PW1 and other children came out from the kitchen as they heard accused shouting at the deceased. The accused then picked a pick which was next to the kitchen and assaulted the deceased three times on the head. PW2 Sicelo Dlamini tried to intervene and the accused threatened to assault him with the pick. PW1 Lungile Dlamini ran away raising an alarm. The accused then threw the pick away and left.
- 2.3 Neighbours then converged to the homestead, one laKunene was the 1st one to arrive and she took a blanket from deceased house and covered her with it. PW6 King Dlamini whilst walking in a pathway met the accused and they greeted each other and proceeded with their journeys. PW6 then met PW7 who informed him that accused had killed deceased. PW6 caught up with accused and he questioned him about the killing of deceased and he responded that it was better for PW6 to kill him. PW6 ordered accused to return to the scene but accused picked up stones and threatened to assault PW6 and he was helped by onlookers to apprehend him.
- 2.4 The Indvuna of Lomshiyo advised PW6 to take the accused to Pigg's Peak police station and while they were taking him there, they met the Pigg's peak police around Msumpe area and he handed him to the police. 4086 Detective Constable Patrick Du-Pont arrested and formally charged the accused and they returned back to the scene where 3024 a scenes of crime officer took photographs of the scene.

- 2.5 **The Accused appeared in court which ruled that he be taken to the psychiatric centre for psychiatric evaluation and if necessary treatment.**
- 2.6 **A psychiatric report has been compiled. The report shows that it is not conclusive whether the accused was insane when he committed the offences but the contents of the report show that the accused was insane when he committed the offence as it is reflected from his psychiatric records which date back to the 4th March 1992 and the interviews between the Doctor and the accused. The Crown and the defence have therefore agreed to proceed with the matter based on the contents of the report.**
- 2.7 **The post mortem examination of the deceased was attended to by Dr. Komma Reddy who is a police pathologist on the 26th August 2005, where he stated that the death was due to the chop wound on the head.**
3. **It is further agreed that the accused specifically admits that the death was due to his unlawful conduct while insane and did not understand the consequences of his actions and there are no other intervening factors.”**

[5] The crown also urged the post mortem report of the deceased exhibit B as well as the Medical reports of the Accused exhibits C and D respectively, which were admitted by consent of the parties.

[6] Now, Section 165(1) and (2) upon which this application is predicated states as follows:-

“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”.

[7] *In casu*, the evidence contained in the statement of agreed facts demonstrates that the Accused committed the offence but was insane when he did it. This is also apparent from the Medical reports, exhibits C and D respectively, which are psychiatric reports of the Accused from the National Psychiatric hospital. For the purposes of this exercise it is imperative that I recite both reports in extenso.

[8] Exhibit C is dated 22nd June 2009 and it states as follows:-

“Re: JOSEPH MBHUTI DLAMINI OP: 79/01

This is to confirm I examined the above today and had site of his medical records. The medical records available are from the 4th March 1992 to 06th February 2001. There were no relatives to give a history to assess his mental state at the time of the alleged crime.

The medical records confirm Joseph Mbhuti Dlamini was first admitted into the National Psychiatric Centre on 04th March 1992 with Schizophrenia (a type of Mental Disorder). He has been on different medication for mental disorder over the years.

I examined Joseph and found he is irritable especially when he talks of Elizabeth Motsa Dlamini (our medical records identify him (sic) as his wife). His speech is incoherent and he has delusions (false beliefs of a conspiracy against him) and he hears voices in his head (auditory hallucination)

Joseph Mbhuti Dlamini is currently on medication and his Schizophrenia has relapsed (i.e. he now has mental disorder).

I have commenced him on Risperidone and Modecate (medication for mental disorder).

I will need to interview his relatives in order to give an opinion on his mental state at the time of the alleged offence.

Joseph Mbhuti Dlamini is not fit for trial. He will need stabilization first on the above commenced medication.

I recommend Joseph Mbhuti Dlamini be transferred to Criminal Asylum Matsapha for assessment, follow-up of his relatives and stabilization.”

[9] Furthermore, exhibit D is dated 9th July 2013, and states thus:

Re: JOSEPH DLAMINI, HOSPITAL FILE NO. OP 596/07

At your request, I performed a psychiatric evaluation of the defendant at the National Psychiatric Referral Hospital. The purpose of this evaluation was to determine whether he appreciated his actions regarding his current criminal charges of murder.

At the beginning of my evaluation of the defendant, I explained the purpose of the examination, and that my findings would not be confidential. I explained that my findings would be released to you, and in any hearings that might occur. The defendant allowed me to examine him and to release my findings to you.

Identifying Data

The defendant is 66 years of age, not married, a father of thirteen children from different mothers. He dropped out of form two due to financial constraints.

Present Symptoms, Physical History and Mediations

The defendant reported that he sleeps well, and has a good appetite. He was attended at the National Psychiatric Referral Hospital for the first time in 2007, and a diagnosis of major mental illness was

concluded. The illness is of fluctuating nature accompanied with paranoia and violent/threatening behavior.

He is physically healthy, and denied any history of significant illness such as cancer, heart disease, hypertension, and diabetes. He is currently maintained on psychiatric medications as an outpatient, and there are no other non-psychiatric medication which he is taking.

Data Regarding Competence to Stand Trial

The following are my observations during the interview regarding this defendant. The defendant is well kempt, oriented, appropriate, calm and cooperative. He is sane; appears able to think clearly and make decisions. He is able to carry on a normal conversation and answer questions appropriately. He is not remorse at all.

Conclusion

Based upon this examination, I conclude that Mr. Joseph Dlamini is sane, hence competent to stand trial in the court of law. It is difficult to conclude if the defendant was able to appreciate the wrongfulness of his conduct at the time of the offence due to lack of appropriate collateral information. His nature of the illness is fluctuating in nature accompanied with terrifying paranoia. In my opinion the chance of him committing the same offence is high hence dangerous to the community.

Kindly provide the necessary support should the need arise. I do give you my consent to release this report to any appropriate party. I will be ready to provide further report if requested in writing as per defendant consent”

[10] It is beyond dispute from exhibits C and D that the Accused has suffered from mental disorder for a couple of years. As shown in exhibit C he was first admitted into the National Psychiatric Centre on 4th March 1992 with Schizophrenia (a type of mental disorder). This medical condition according to exhibit C makes him have delusions and hear voices in his head, auditory hallucinations. He has thus been on different medications for mental disorder over the years. The obvious and apparent effect of this medication is seen in exhibit D dated 9th July 2013 which shows the Accused as calmer and saner, even though exhibit D ominously warns a conclusion that *“His nature of the illness is fluncuating in nature accompanied with terrifying paranoia. In my opinion the chance of him committing the same offence is high hence dangerous to the community”*

[11] It appears to me therefore from the totality of the evidence led, that the Accused suffers from mental disorder, which has spanned over a couple of years including the period that he committed the offence in 2005. Even though the medical reports are not conclusive of whether or not he was insane when he committed the offence, the fact of his insanity or mental disorder during this period stick out like a sore thumb from exhibits C and D.

[12] I am thus inclined to conclude that though the Accused committed the offence he was however insane when he committed it. I make a special finding to this effect.

[13] In these premises, I order as follows:-

**“That the Accused person be and is hereby ordered to be kept in
custody as a criminal lunatic at the Criminal Lunatic Asylum
pending directions from the Attorney General”**

**DELIVERED IN OPEN COURT IN MBABANE ON THIS
.....DAY OF2013**

**OTA J
JUDGE OF THE HIGH COURT**

For the Crown: S. Dlamini
 (Crown Counsel)

For the Accused: N. Mazibuko