



IN THE HIGH COURT OF SWAZILAND

Criminal case No: 422/10

In the matter between:

REX

VS

MANDLA ERIC MKHONTA

Neutral citation: *Rex v. Mandla Eric Mkhonta (422/10) [2014] SZHC66 (2013) 3 April 2014*

Coram: M.C.B. MAPHALALA, J

Summary

Criminal Law - Accused charged with Attempted Murder and pleads not guilty – essential requirement of the offence considered – held that *dolus eventualis* suffices for purposes of establishing *mens rea* – accused convicted as charged

**JUDGMENT
3 APRIL 2014**

- [1] The accused is charged with Attempted Murder, it being alleged by the Crown that on the 27th June 2010, at Zibonele area in the Hhohho region, he unlawfully and intentionally stabbed Sithembile Mncina with intent to kill her. He pleaded not guilty to the offence.

- [2] The complainant Sithembile Mncina, was PW1, during the criminal trial, and, she testified that she knows the accused since they both resided at Zibonele area. The accused was a patient of PW1's husband Mge Shongwe. It is not in dispute that the accused was receiving traditional medical treatment from PW1's husband.

- [3] On the 27th June 2010 the accused arrived drunk at the Shongwe homestead and demanded to speak to PW'1s husband. PW1 called her husband, and, he came out to speak to the accused. An argument broke out between the two men, and Mge Shongwe went back to the Kitchen, leaving the accused outside the house.

- [4] Meanwhile PW1 was walking towards the house; however, before she entered the house, she saw the accused leaving the house carrying a TV set as well as a spear. The area around the entrance to the house was lit with electricity and PW1 could see clearly what was happening.

- [5] Seeing what the accused was doing, PW1 raised an alarm; and, the accused stabbed her with the spear on the left side of her body, and, the spear went through her body and protruded to the other side. The accused pulled back the spear. PW1 shouted after the stabbing saying the accused was stabbing her. She became dizzy and fell down to the ground.
- [6] PW1 was subsequently admitted for one night at Pigg's Peak Government Hospital where three stitches were applied to her wounds. Thereafter, she was transferred to Mbabane Government Hospital where she was admitted for a month and one week. She was discharged from the hospital and went to her marital home. After three weeks police took her for a medical check-up at Pigg's Peak hospital; she was still bleeding from her wounds. She was treated and discharged. She testified in Court that she was still not feeling well, and, that if she stands for a long time, bleeding and dizziness is invoked.
- [7] She testified during the trial, that the TV set belongs to her and the spear belongs to her in-laws. She was able to identify both the TV set and the spear in Court; and, the spear was kept in her house behind the door. She maintained her evidence under cross-examination. She further stated that she fell unconscious after she was stabbed with the spear; and, that she only

gained consciousness when crossing Mlumati river on her way to Pigg's Peak hospital. She told the Court that she was conscious when recording a statement with the police.

[8] She denied that there was a fight between her husband and the accused; however, she admitted that she saw them quarrelling with each other. She further denied that she and her husband attacked the accused using the spear or that she was stabbed by her husband who was trying to stab the accused. She maintained her evidence that she was stabbed by the accused at the veranda when she confronted him carrying the TV set and spear and leaving the house; she reiterated her evidence that her husband was inside the kitchen when the accused stabbed her.

[9] PW2 Mge Zweli Shongwe is the husband to PW1. His evidence corroborates that of PW1 in all material respects. In particular he stated that he was a Traditional healer, and, that the accused was his patient. According to PW2, the accused approached him three years ago and asked for "muti" which would enable him to get a job as a builder, and, that he gave him the "muti". He charged him E1,500.00 (one thousand five hundred emalangen) and the accused only managed to give him two goats valued at E800.00 (eight hundred emalangen).

[10] On the 27th June 2010 at 7 pm, the accused came drunk to the homestead of PW2 and told him that the muti did not help him. It is not denied that the accused had secured the muti from PW2 three years before; and, that during this period, he had not complained that the muti was not functioning. A quarrel subsequently developed between the accused and PW2; however, PW2 told the accused to go home and return the next day since he was drunk. The accused was demanding the return of the goats. PW2 returned to the kitchen and the accused pretended to be leaving the homestead.

[11] Subsequently, PW2 heard PW1 raising an alarm. He went out of the house and saw the accused standing at the veranda. PW1 had already been stabbed, and, when PW2 asked the accused why he had stabbed PW1, the accused further threatened to stab him. PW2 raised an alarm and neighbours came to the scene; however, they found that the accused had left. PW1 was subsequently transported to the Pigg's Peak Government hospital where she was admitted.

[12] PW2 reported the incident to the Pigg's Peak Police Station. Together with the police, PW2 went to the scene where the police inspected the scene. They found that their children as well as neighbours had already poured soil on the blood. In August 2010 PW2 was called by the police to identify exhibits which had been handed to them by the accused, that is the spear

and TV set. He was in the company of PW1 who had just been discharged from the Mbabane Government Hospital. He also identified these exhibits in Court.

[13] Under cross-examination PW2 reiterated that he saw the accused at the veranda carrying the spear and TV set after their quarrel, and, that he had already stabbed PW1. He reiterated his evidence that he did not witness the stabbing of his wife but he heard her screaming and rushed to the scene; he found his wife lying on the ground with stabbed wounds, and, the accused standing next to her carrying the spear and TV set. When he confronted him, the accused did not deny stabbing his wife but he went on to threaten him with the spear. He denied stabbing PW1 by mistake as alleged by the accused.

[14] PW3 Dr. Michael Ggayi, a general surgeon based at the Mbabane Government Hospital testified that he worked with Dr. Sammah for two years in the Department of Surgery, and, that on the 28th June 2010, he operated on PW1 together with Dr. Sammah; thereafter, Dr. Sammah prepared a medical report at the instance of police. He testified that Dr. Sammah has left the country since his contract has expired; hence, he was submitting the medical report in Court. The medical report was admitted in Court and marked Exhibit 1.

[15] Exhibit 1 shows that PW1 has a stab wound on the left side of the stomach; at the time of her admission in hospital, she was conscious with no active bleeding, and, her clothes were bloodstained. PW3 further testified that PW1 had to be operated for the injuries sustained. He observed that the injuries were very serious since the spear penetrated her body to the other side. The medical report was admitted in evidence and marked Exhibit 1. He maintained his evidence under cross-examination.

[16] PW4 Reginah Mashaba, a community Policewoman based at Zibonele area, testified that sometime in June 2010, the accused came to her homestead and told her about this matter; then he asked her to accompany him to Horo Police Post to surrender himself to the police. The accused was carrying a spear and a TV set. PW4 accompanied the accused to the police; however, they left the exhibits at her homestead since they were using public transport. The police drove them back with the accused to her homestead where the accused handed the exhibits to the police; the police took the accused with the exhibits to the police post where he was arrested and formally charged. PW4 identified the exhibits in Court. Under cross-examination PW4 conceded that the accused told her that he had accidentally stabbed a person; however, the identity of the injured person was not disclosed to her.

[17] PW5 Constable Reuben Gcina Dlamini, a police officer who was based at Horo Police Post in June 2010, testified that on the date in question PW4 arrived at the Police station accompanying the accused in her capacity as a community police. The accused had come to surrender himself to the police with regard to this matter. He cautioned him in terms of the Judges Rules that he was not obliged to say anything or point out anything but that whatever he said or pointed out would be used in evidence against him in Court. He formally arrested the accused. The accused, PW 4 as well as D/Inspector Sibusiso Dlamini and D/Sgt S. Mabuza subsequently went to the homestead of PW4 where the accused handed the exhibits to the police. He maintained his evidence under cross-examination.

[18] PW6 D/Inspector Sibusiso Dlamini was the investigating officer in this matter and, he testified that he received a report of the attempted murder after Mge Shongwe had reported the matter. Together with Mge Shongwe and other police they went to Shongwe's homestead with a view of preserving the scene; however, they found that the scene had been tempered with.

[19] On the 28th June 2010, at Horo Police Post, PW5 who was in the company of PW4 handed the accused to PW6 who was accompanied by D/Sgt

Mabuza. The accused was duly cautioned in terms of the Judges Rules. The police were led to the homestead of PW4 where the accused handed the exhibits to the police. Back at Pigg's Peak Police Station, the accused was formally charged for the Attempted Murder of PW1. The spear and TV set were admitted in evidence and marked Exhibits 2 and 3 respectively. Thereafter, the Crown closed its case.

[20] The accused testified in his defence, and, he admitted that Mge Shongwe was his traditional doctor; and, he further admitted that he went to the Shongwe homestead on the 27th June 2010 as alleged by the Crown. He concedes that they ended up quarrelling with PW2 over the amount of fees for services rendered. Contrary to the evidence of PW2, the accused denied that fees were E1,500.00 (one thousand five hundred emalangen) and that the two goats costs E800.00 (eight hundred emalangen) leaving a balance of E700.00 (seven hundred emalangen) outstanding. He further denied that the quarrel between them was caused by a demand of a refund because the muti was allegedly ineffective.

[21] The accused testified that he had given two goats to PW2, one for payment of muti and the other small goat for safekeeping to be returned once it is grown up. According to the accused the second goat belonging to him had subsequently given birth to two lambs, and that the accused had sold all his

goats. He further testified that he had sent community police to PW2 three times to fetch his goats without success; and, that they had subsequently agreed that he would be given certain items as payment for his goats; hence, he came to the Shongwe homestead on the 27th June 2010 to take the items since the debt was long overdue.

[22] He admitted meeting PW2 on this date and later taking the TV set from the house by force. According to his evidence, both PW1 and PW2 attacked him when he was about two metres away from the house; and, that when they realised that they were being overpowered, PW1 fetched the spear from the house and gave it to PW2. The accused further testified that when PW2 tried to stab him, PW1 was mistakenly stabbed by PW2 as they fought over the spear; and, that he took the spear and TV set to PW4, the community police as evidence.

[23] Under cross-examination the accused conceded that his Attorney did not put to PW2 that they had agreed that the second goat would be returned to the accused after it was grown up. It was further not put to PW2 that the muti was not E1,500.00 (one thousand five hundred emalangeni) as alleged by PW2 but was one goat. The defence did not put to PW2 that he had sold all the goats without the accused's permission. He told the Court that he reported the issue of the goats to Mvundeni Magagula, a community

police; however, he was not called to give evidence on behalf of the accused in this regard. Furthermore, the defence attorney did not put to PW1 that she was stabbed by her husband PW1. Similarly, the defence attorney did not put to PW2 Mge Shongwe that he stabbed his wife.

[24] The accused admitted that after the incident, he took the blood-stained spear home together with the TV set allegedly as an exhibit. He conceded that he did not report the incident to the police that night or assist PW1 to secure medical treatment for the injuries sustained. PW4 testified that when they left her homestead with the accused to board public transport to the Police Post, they left behind the exhibits and further used a different route for fear that the relatives of PW1 would attack the accused; this evidence was not disputed by the defence attorney. Similarly, PW4 told the Court under cross-examination that the accused asked her to accompany him to the police post because he had accidentally stabbed a person; again this evidence was not challenged by the defence attorney. It is apparent from the evidence that the accused did not report at the police station that PW2 had stabbed his wife, but he merely surrendered himself to the police as the assailant; hence, PW5 arrested him after interrogation, and, PW6 formally charged the accused after investigations.

[25] It is apparent from the evidence before Court that the accused stabbed the complainant when she confronted him coming out of the house carrying a TV set and a spear. The evidence of PW2 is corroborative in this regard on the basis that after the accused had stabbed PW1, she shouted for help and PW2 found that the accused had stabbed his wife. When PW1 confronted the accused, he threatened to stab PW2 as well; he did not deny stabbing PW1. In the circumstances, it is irrelevant that PW2 did not witness the actual stabbing of his wife.

[26] Notwithstanding that only PW1 witnessed and experienced the stabbing, I am satisfied that the Crown has proved beyond reasonable doubt that the accused committed the offence charged. The evidence of PW1 is corroborated by that of the other Crown witnesses as fully analysed in the preceding paragraphs. The Court of Appeal of Swaziland, as it then was, in the case of *Khumalo and Others v. R* 1979-1981 SLR 259 at 264 states:

“It is competent for a Court to convict on the evidence of a single witness... but it is established law that such a conviction can only follow if the evidence of the single witness is clear and satisfactory in every material respect...

The clarity and the adequacy of the single witness testimony requires to be determined with reference inter alia, to such factors as the probabilities, the contradiction of his evidence by other evidence, and his interest adverse to the accused. It must be borne in mind that the

ultimate enquiry is whether the Crown on the strength of the single witness had discharged the onus of proving the guilt of the accused beyond reasonable doubt.”

[27] The law provides for the sufficiency of evidence of one witness in criminal cases with the exception of perjury and treason. Sections 236 and 237 of the Criminal Procedure and Evidence Act No. 67 of 1938 provide the following:

“236. The court by which any person prosecuted for any offence is tried, may convict him of any offence alleged against him in the indictment or summons on the single evidence of any competent and credible witness: Provided that no court may convict any person of — (a) perjury on the evidence of any one witness unless, in addition to and independent of the testimony of such witness, some other competent and credible evidence as to the guilt of such person is given to such court; or (b) treason except upon the evidence of two witnesses where one overt act is charged in the indictment, or, where two or more such overt acts are so charged, upon the evidence of one witness to each such overt act.

237. Any court which is trying any person on a charge of any offence may convict him of any offence alleged against him in the indictment or summons on the single evidence of any accomplice: Provided that such offence has, by competent evidence, other than the single and unconfirmed evidence of such accomplice, been proved to the satisfaction of such court to have been actually committed. (Amended P.14/1944.)”

[28] *Fagan JA* in *R. v. Mokoena* 1956 (3) SA 81 (A) at 85-86 approved and followed the decision of *De Villiers J.P.* in *Rex v. Mokoena* 1932 O.P.D. 79 at p. 80 where he dealt with the sufficiency of the single evidence of a competent and credible witness and stated the following:

“In my opinion that section should only be relied on where the evidence of the single witness is clear and satisfactory in every material respect. Thus the section ought not to be invoked where, for instance, the witness has an interest or bias adverse to the accused, where he has made a previous inconsistent statement, where he contradicts himself in the witness box, where he has been found guilty of an offence involving dishonesty where he has not had proper opportunities for observation, etc.”

See: *R. v. T* 1956 92) SA 676 (A) at p. 678.

[29] It is apparent from the evidence that after the argument with PW2, the accused went inside the house and took the TV set as well as the spear. Meanwhile PW2 had gone back to the kitchen. When the accused went out of the house, he met PW1 who raised an alarm when seeing the accused carrying the TV Set as well as the spear. The accused stabbed PW1 with the spear and she cried for help, and, PW2 came out of the kitchen and found that PW1 had already been stabbed by the accused. When PW2 confronted the accused about the stabbing, he did not deny stabbing PW1 but threatened to stab any person who should come near him. Ironically he

did not render assistance to the injured PW1 even though she was lying helplessly on the ground. He merely left with the TV set as well as the spear which was blood-stained. On the next day, he asked PW4 to accompany him to the police to surrender himself with the exhibits. He explained to her that he has accidentally stabbed a person. The defence attorney did not dispute this evidence when cross-examining PW4.

[30] The evidence of PW3 shows that the injuries sustained by PW1 were serious and life-threatening. PW1 was stabbed on the front abdomen and the spear penetrated her body and protruded to the back. She was hospitalized in Pigg's Peak and later transferred to Mbabane Government hospital where she was admitted for a month. It is the evidence of PW1 that she is not yet fully recovered, and, that if she stands for a long time, bleeding and dizziness occur.

There is no doubt that when the accused stabbed the deceased, he foresaw the possibility that she might die but he was reckless whether or not she died. This can be concluded from the lethal weapon used, the delicate part of the body where the stabbing was done as well as the seriousness of the injuries sustained.

[31] It is now trite law that in order to support a conviction for attempted murder, there need not be a purpose to kill proved as an actual fact. It is

sufficient if there is an appreciation that there is some risk to life involved in the action contemplated coupled with recklessness as to whether or not the risk is fulfilled in death. Only *mens rea* in the form of *dolus eventualis* is required for purposes of attempted murder, and, *mens rea* in the form of *dolus directus* is not required.

See: the case of Rex v. Huebsch 1953 (2) S.A. 561 (A) at 567 as well as Henwood Thornton v. Rex 1987 – 1995 SLR 271 at 273

M.C.B. MAPHALALA
JUDGE OF THE HIGH COURT

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