



# IN THE HIGH COURT OF SWAZILAND

Crim. Case No. 208/94

In the matter between:

REX

VS

NOBUHLE ZIKALALA

CORAM : A.F.M. THWALA  
FOR THE CROWN : MR. NGARUA  
FOR DEFENCE : MR. E. MAZIYA

## JUDGMENT

23/03/95

The accused is charged with the murder of Mbongiseni Shiba Sibandze. The accused is a young girl who according to her evidence will finish 15 years in September this year. The deceased was a boy of 17 years as is estimated by the doctor.

The medical report was handed in by consent and marked exhibit 'A'. The doctor states that the deceased died of shock and haemorrhage as a result of stab wound to the left lung and heart.

The Crown then called two witnesses. Then the accused gave evidence. The Crown evidence is substantially the same with that of the accused except the description of the stabbing and the assault. Zethu Mavuso gave evidence that on the previous day, the accused told her that the deceased was smelling because he did not wash.

On the following day, the deceased and Zethu went to the river. The deceased went to fetch water with a wheel-barrow. After filling the containers, he started pushing the wheel-barrow home. Before he proceeded far, the accused and Dorothy came to the river. Zethu told the accused that the deceased said he would get her because of what she said to him the previous day. The deceased then came back and asked the accused why she said he was smelling and did not wash. The accused said 'ask your friends, I did not say this'. The deceased then assaulted the accused. He then again left her. He proceeded to the wheel-barrow. The accused uttered some words and the deceased said 'Are you still grumbling'. The accused then said 'come, I am going to stab you'. The deceased then broke two sticks and went to the accused. The evidence here is not the same. The accused said that the deceased assaulted her, while Dorothy and Zethu say the deceased did not assault the accused. At that moment the accused opened the knife. The accused confirms that when she opened the knife she was not being assaulted by the deceased. Dorothy told the deceased that he must not go near the accused she is carrying a knife. The deceased said 'she can not stab me' or, 'I can not be stabbed by this thing'. According to Zethu, the deceased turned away ready to go. According to Dorothy, the deceased stood facing the accused. The accused then stabbed the deceased on the chest.

There is no dispute that the deceased was stabbed on the chest. This is supported by the doctor's evidence in that the deceased died as a result of an injury to the left lung and heart. After the stabbing the deceased held his chest and started walking and said 'You will send me to hospital'.

The accused said 'I have no money to send you to hospital'. The deceased walked for a few metres and fell. He stood up and walked a few metres and fell down and died.

The accused is old enough to have appreciated that when she stabbed the deceased on the vital parts of the body, the deceased would die. There was no cause to stab the deceased with a knife. The deceased used his hands and he also picked up the two small sticks. There was no cause of defending herself with a knife. According to the Crown evidence, when the deceased was stabbed, he was not assaulting the accused. This shows that the accused had an intention to kill the deceased, or she delivered the blow on the vital parts of the deceased's body not caring whether he dies or not. The deceased then died. She had a chance of running away. I find the accused guilty of murder as charged.

The accused is 14 and will be 15 in September this year. I am not able to postpone sentence because this crime is listed on the third schedule which means that the court cannot impose a suspended sentence or postpone the sentence. The deceased is a female. I cannot impose a sentence of whipping. That could help because it would be an effective sentence. What is left for me is Section 296 of Act 67 of 1938 which states that the court cannot impose sentence of death to a person who is under the age of 18. It also empowers the court to sentence such person to be detained at His Majesty's pleasure and if so sentenced, he shall be detained in such place and under such conditions as His Majesty may direct, and whilst detained shall be deemed to be in full custody.

I shall write a report to the Prerogative of Mercy so that this case comes before His Majesty as soon as possible. You have been in prison since the 30th June, 1994. The Prerogative of Mercy will make its recommendation to His Majesty. You will be returned to prison and kept at His Majesty's pleasure.

  
A.F.M. THWALA

JUDGE