



IN THE HIGH COURT OF ESWATINI
JUDGMENT

Case No. 325/2012

In the matter between:

REX

And

LUCKY MANANA

Neutral citation: *Rex v Lucky Manana (325/2012) [2021] SZHC 64 (28 April 2021)*

CORAM : **T.L. DLAMINI J**

Heard : 6, 7 & 22 April 2021

Delivered : 28 April 2021

[1] *Criminal law and procedure – Indictment on a charge of Attempted Murder – Plea of guilty to a lesser charge of Assault GBH – Plea to the lesser charge accepted by the crown – Effect thereof.*

Summary: *Accused person is charged with two counts of attempted murder and assault with intent to cause grievous bodily harm – The charge of assault with intent to cause grievous bodily harm was withdrawn at commencement of trial following that the complainant had since died – On the charge of attempted murder, the accused pleaded not guilty but guilty to a lesser offence of assault with intent to cause*

grievous bodily harm – The plea was accepted by the crown and a statement of agreed facts was prepared and handed-in by the parties – The statement was confirmed by the accused as correctly reflecting the events that took place.

Held: *That the accused is guilty based on his own plea – Sentenced to two years imprisonment with the option of paying a fine of E6, 000.00 – Half of the sentence suspended for a period of three years.*

JUDGMENT

- [1] Lucky Manana stands accused of two offences. On the first count he is charged with the Attempted Murder of Thandi Hlatshwako. According to the indictment, he unlawfully and with intent to kill, committed this offence by hacking her with a bush knife all over her body. On the second count, he is charged with Assault with Intent to do Grievous Bodily Harm (Assault GBH). The indictment reflects that he committed this offence by hacking one Mangwangwa Lukhele with a bush knife all over the body with the intention to injure him. Both offences were committed at Bugeleni area in the Shiselweni district on 21 October 2012.
- [2] At commencement of trial, the crown withdrew the second count of Assault GBH committed against the person of Mangwangwa Lukhele. The court was informed that the complainant in respect of this charge has since died.
- [3] When count one (1) was put to the accused, he pleaded not guilty to attempted murder but guilty to assault with intent to cause grievous bodily harm. In effect, this was a plea of guilty to a lesser offence to that of attempted murder. The crown accepted the plea of guilty to Assault GBH. This is sanctioned by **s.155 of the Criminal Procedure and Evidence Act**,

67/1938 (as amended), hereinafter referred to as “**the Act**”. **Subsection (2)** (a) thereof provides that when pleading, the accused may do so in the manner quoted below:

- (2) **If he pleads he may plead either –**
(a) **that he is guilty of the offence charged or, with the concurrence of the prosecutor, of any other offence of which he might be convicted on such indictment or summons;**

[4] The effect of the provision cited in the above paragraph is that whilst the accused was charged with attempted murder, acceptance of the accused’s plea to a lesser offence of assault GBH by the crown, overturns the initial charge which the accused had been called upon to answer to that of the lesser offence.

[5] The parties then prepared a statement of agreed facts which was handed-in by consent. The statement was read into the record, and it *inter alia* state what is quoted below:

It is hereby agreed between the crown and the accused that:

2. **The accused pleads guilty to a lesser charge of Assault with intent to do Grievous Bodily Harm which the crown hereby accepts.**
3. **Now the accused admits the herein under mentioned relevant facts in terms of Section 272 of the Criminal procedure and Evidence Act 67/1938.**
4. **...**
5. **That the complainant and the deceased PW4 Mangwangwa Petros Lukhele stayed together at Nhlalabantfu, Mtsentsaneni area.**
6. **On the 21st October 2012 at about 0800 hours both complainant and PW4, Mangwangwa Petros Lukhele, were at their homestead. The complainant was at a kitchen and PW4 Mangwangwa Petros Lukhele was outside. Suddenly the complainant heard some noise outside. She came out of the kitchen to investigate what was happening.**

- 7. The complainant found the accused carrying a bush knife and asked PW4 Mangwangwa Petros Lukhele the whereabouts of his (accused) goats. PW4 Mangwangwa Petros Lukhele told the accused that the goats he was asking were at the kraal and were given to him by one Sibusiso Tfwala.**
- 6. The accused then charged towards PW4 Mangwangwa Petros Lukhele and started hacking him repeatedly with the bush knife all over his body. The complainant pleaded with the accused to stop what he was doing. The accused then turned to the complainant and started to hack her with the same bush knife several times all over her body. At that time PW4 Mangwangwa Petros Lukhele ran away to hide in a house. The complainant then raised an alarm and the accused ran away. PW2 Elizabeth Zwane came and called the Police. The complainant and PW4 Mangwangwa Petros Lukhele were taken to Sithobela Health Centre for treatment where they were treated by PW8 Doctor Mangunda who then compiled medical reports.**
- 8. The accused was eventually arrested by officer 5333 Constable Sandile Dlamini (PW7) and other officers at Thembelihle junction while he was boarding a minibus enroute to Hlathikulu town. This witness cautioned the accused in terms of the judges' rules and the accused freely and voluntarily led them to his homestead at Bugeleni and he retrieved a bush knife which he handed to the police.**
- 9. Now the accused accepts that:**
- 10. Complainant was injured due to his unlawful and intentional conduct.**
- 11. He used the bush knife to hack the complainant.**
- 12. Complainant was severely injured on her body and sustained, amongst others, lifelong injuries owing to the assault on her body by the accused.**
- 13. The following items are handed in as part of the Crown's evidence by consent of both parties;**
 - 13.1 Statement of agreed facts**
 - 13.2 Medical report of complainant**

13.3 a Bush knife

Dated at Mbabane this 7th day of April 2021.

- [6] The statement of agreed facts was marked as EXHIBITB “3” while the medical report and bush knife were marked as EXHIBIT “2” and EXHIBIT “4” respectively.
- [7] Gathered from submissions made by the defence, is that four goats that belong to the accused went missing. A case for their theft was reported to the police but they could not be recovered. After a thorough search the goats were found at the kraal of the complainant in respect of count 2, Mangwangwa Lukhele. On the day of the assault the accused went to confront Mangwangwa Lukhele who stayed together with the complainant in respect of count 1, Thandi Hlatshwako. On being asked about the goats, Mangwangwa Lukhele informed the accused that the goats were in his kraal and that they were given to him by one Sibusiso Tfwala. The accused then charged towards Mangwangwa and started hacking him with the bush knife.
- [8] Evidence of the injuries that the complainant sustained were proved by the medical report marked EXHIBIT “2”. The medical report was also read into the record. It states that on 21 October 2012 at 1200 hours the person of Thandi Hlatshwako was examined at Sithobela Health Centre. She came dressed in a blood stained dress. She was found to have sustained the following wounds: a deep cut on the left leg midshaft inferiorly which is approximately 10 cm long, with exposed tibia bone; two puncture wounds on the left arm; and a deformed left forearm. She was also found to have sustained the following fractures: a midshaft fractured left tibia and fibular

bone; and a fractured left humerus midshaft. She also had a deep cut on the right metacarpal (angel) joint with partial separation of the joint. The doctor remarked that the complainant suffered multiple trauma injuries, with fractured tib / fib and humerus. She also suffered hypertension and pallor due to excessive bleeding.

[9] In terms of **the CP&E Act**, the statement of agreed facts takes the place of evidence, per **s.272**. The section provides as quoted below:

272 (1) In any criminal proceedings the accused or his representative in his presence may admit any fact relevant to the issue, and any such admission shall be sufficient evidence of such fact.

[10] The statement of agreed facts was prepared by counsel for the crown together with the defence attorney. The statement was then duly signed by them. Having been handed-in, the statement was read into the record and the accused confirmed its accuracy. It therefore was made in the presence of the accused and constitute sufficient evidence in terms of s.272 of the CP&E Act.

[11] The CP&E Act also allows the use of medical reports signed by medical practitioners as evidence in respect of any injury or condition of the body of a person. This is provided for in s.221 (1) (a) which is quoted hereunder:

Reports by medical or veterinary practitioners

221. (1) In any criminal proceedings in which any facts are ascertained –

- (a) by a medical practitioner in respect of any injury to, or state of mind or condition of the body of, a person, including the results of any forensic test or his opinion as to the cause of death of such person; or**
- (b) ...**

such facts may be proved by a written report signed and dated by such medical or veterinary practitioner, as the case may be, and that report shall be *prima facie* evidence of the matters stated therein:

- [12] The medical report which was handed-in and marked as EXHIBIT “2” is therefore evidence in respect of the injuries that the complainant sustained from the assault by the accused.
- [13] The accused person is therefore convicted, on the basis of his own plea, statement of agreed facts and the medical report, and is found guilty of Assault GBH.
- [14] In mitigation, it was submitted on behalf of the accused that he is a first offender. This fact was confirmed by counsel for the crown. It was also submitted that he is an adult Liswati aged 54 years. He is married with ten (10) minor children. Five of them are attending high school whilst four are still attending primary school. The last one is very young and has not even started primary school.
- [15] It was further submitted that his wife is unemployed. The accused is therefore the sole breadwinner. At the time of his recent incarceration on 23 July 2020, he was a truck driver earning eight thousand emalangeni (**E8,000.00**) per month. The court was urged by the defence to be lenient as the accused did not even waste the time of the court given that he tendered a plea of guilty. The court was further urged, when passing sentence, to allow the accused the option of paying a fine, and/or to consider imposing a sentence, or a portion thereof, that will be suspended.

[16] The crown submitted that as much as it is true that the accused is a first offender and therefore has a clean criminal record, the court should not turn a blind eye to the fact that he used a dangerous weapon. Attacks on members of the society using such weapons have now become common and the courts need to stop that. It also submitted that the complainant was attacked at the comfort of her homestead and was unarmed when attacked, and that she suffered lifelong injuries from the assault. The crown further submitted that the courts have in many instances bemoaned the use of dangerous weapons against defenceless and unarmed citizens, and women in particular.

[17] In determining the appropriate sentence to impose, I do take into account that the accused is a first offender. I also take into account and consideration that he is married and has ten young children who are still attending primary and high school, and that the last one is still to start grade one (1). I also do take into account that he is the sole breadwinner for this family.

[18] On the other hand, society looks up to the courts for protection from people like the accused who take the law into their own hands. Attacking an unarmed woman using a bush knife is inexcusable. The use of dangerous weapons such as knives and bush knives on other citizens have become common. The courts have a duty to stop that by imposing harsher sentences on offenders. This would also deter other would-be offenders. **M.C.B. Maphalala J**, as he then was, in the case of **Rex v Muzi Dlamini (126/2011) [2013] SZHC 53 (06 March 2013)**, had this to say:

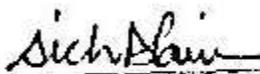
[13] **There is a sudden upsurge in this country with the use of bush knives, slashers as well as axes in the commission of serious and violent offences against innocent and law-abiding citizens. Many of these cases are committed against defenceless women.**

This court has a Constitutional duty to come to the assistance of members of the public who cannot defend themselves and impose appropriate sentences that will serve to curb this scourge.

- [19] In the case of **Rex v Sikhumbuzo Nhlanhla Mkhabela (83/12) [2019] SZHC 95 (07 June 2019)** this court convicted and sentenced the accused to three years for Assault GBH. The accused assaulted his girlfriend by first hacking her with a bush knife, hit her with a bottle, and then assaulted her using an umbrella until it broke.
- [20] In the appeal case of **Bheki Malanseni Dlamini v Rex (6/2002) [2002] SZSC 7 (07 June 2002)**, the Court of Appeal confirmed a sentence of three (3) years for Assault GBH. I am therefore satisfied that, depending on the facts of each case, imprisonment for three years fits the offence.
- [21] The accused was arrested on 21 October 2012. He stayed in custody until his release on bail on the 19 January 2013. On the 23 July 2020 this court cancelled his bail for failure to attend court for commencement of his trial, and has been in custody since that day. He therefore has spent a total of 12 months and four days in custody.
- [22] Having considered the triad, I hereby sentence the accused to imprisonment for a period of **two (2) years**, with the option of paying a fine of six thousand emalangeni (**E6, 000.00**). Half of the sentence is suspended for a period of three (3) years, on condition that the accused is not convicted of any offence where violence is an element. The period of imprisonment is

backdated and ordered to take into account any period that the accused has spent in custody in respect of this offence.

[23] Given that the accused has already spent a total of twelve (12) months and four (4) days in custody, he therefore has served half of the imprisonment term and is entitled to be released forthwith, and it is so ordered.



T. L. DLAMINI
JUDGE OF THE HIGH COURT

For the crown: Mr S. Phakathi
For the accused: Mr O. Nzima