

In the Supreme Court of South Africa  
In die Hooggeregshof van Suid-Afrika

( APPELLATE ) DIVISION).  
AFDELING).

APPEAL IN CRIMINAL CASE.  
APPEL IN STRAFSAAK.

BEN MAKANYA

Appellant.

versus/teen

THE QUEEN

Respondent.

Appellant's Attorney Mr. M. L. Mitchell Respondent's Attorney Mr. J. Marais  
Prokureur van Appellant Prokureur van Respondent

Appellant's Advocate \_\_\_\_\_ Respondent's Advocate \_\_\_\_\_  
Advokaat van Appellant Advokaat van Respondent

Set down for hearing on: \_\_\_\_\_  
Op die rol geplaas vir verhoor op:—

Thursday, 29<sup>th</sup> Nov., 1956.

(DCL)  
1,2,5,9,11.

29/11/56 9.45 - 11.55.

Appeal dismissed (No written judgment)

at Registrar  
29/11/56

Fourth Day's Proceedings.

Tuesday, 25th September 1956.

J U D G M E N T.

BROKENSHA, J.:

The accused is charged with the murder on 18th May, 1956, at Cato Manor, Durban, of another native male, Shadrack Sishange.

The medical evidence, as found at the post-mortem examination held on the 19th May, 1956, showed that the cause of death of the deceased was a penetrating wound of the left chest. The track of the wound was approximately  $3\frac{1}{2}$  inches. The wound entered the pericardial cavity and pierced the cavity of the right ventricle. There was also a superficial incised  
10 wound  $1\frac{1}{2}$  inches long on the palm of the right hand. There was no sign of a bruising such as one would expect from a blow with a sjambok.

A blood-test showed that deceased's blood contained 276.8 mgms. of volatile-reducing substances per 100 cc. of blood. In the opinion of Dr. Robertson, the Senior Assistant Government Pathologist, Durban, this meant that at the time of his death the deceased was drunk.

Dr. Robertson said force must have been used in the chest wound because it cut through the cartilage. The  
20 direction of the wound was backwards and downwards.

Several witnesses gave evidence, including the accused on his own behalf, and the Court held an inspection in loco at which the accused and the witnesses were present.

The Crown was not able to produce any eye-witness  
/of...

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of the fatal assault on the deceased, so that the case finally rested upon the inferences to be drawn from the facts in accordance with the principles laid down in the cases of R. v. Blom, 1939 A.D., 188, at p.202; R. v. de Villiers, 1944 A.D., 493, at p.508 and Rex v. Manda, 1951(3) S.A., 158 (A.D.) at p.166.

We have given careful consideration to all the evidence and the conclusions at which we have arrived are as follows:

10           (1)    The stabbing took place not where the body was found but at the blood patch found outside Judith's room which is situate below the accused's cottage and room.

          (2)    It is conclusive that there was a quarrel between accused and his wife; the accused admits it. That there was some feeling apart from the mere fact of his coming back late from his sister's place is obvious from the evidence of Elizabeth, viz. that accused said he had struck one of her mother's "gang".

20           (3)    The quarrel woke up Judith who heard the noise of scolding by the accused and his wife. She heard voices near her doorway and the sound of running footsteps, someone running away. It is clear from the evidence of Elizabeth that when accused took up his sjambok his wife ran out - this also appears from the evidence of Selina. The running footsteps heard by Judith were probably there, the accused may have pursued her: Elizabeth says when she came out (after her mother had run out) her father was coming up from below. Judith next heard accused talking as if he were going back to his room - she heard his voice from the front of the room.

30           (4)    Both Selina and Eunice say they became frightened when the accused grabbed the sjambok. They ran to the corner of the cottage occupied by them. They then saw the  
/deceased...

JUDGMENT.

deceased standing at the corner of accused's room. They heard accused say to deceased, "Who is this peeping into my room" (Selina) or "Who is this standing next to my door" (Eunice). Judith also said she heard accused say, "Who is this standing in front of my door". It is clear, and it is admitted that accused struck deceased with the sjambok at this stage. Judith heard the blow struck; she described it as a slapping noise.

10 (5) Judith then heard the sound of running footsteps again, and there was a bump against her wall to the left of her door as one faces it from outside. She heard accused say, "I will catch you, you swine. You have felt me - you will feel me before you sleep" - and again the sound of footsteps. This must have been deceased proceeding to the place where he collapsed outside Shozi's room.

20 (6) Obed Ntombeza had been sitting on a bench on the other side of the cottage from accused's room - he had heard someone say, "Here is Makanya striking a person". He went round and said to accused, "What is up?" Accused was then coming up from below. Accused said, "I have struck a man who was peeping into my room." Obed asked him if he had assaulted the lover of his (Obed's) daughter. Judith heard this conversation but said accused said, "Mamkize's wish has come true - I have killed her lover - two people, Eunice and Selina, will give evidence because they saw it." Obed said, "Have you killed my daughter's lover". Accused said, "No: it was not her lover - it was the secret lover of Mamkize". Judith then heard accused order Mamkize into the room, "I will stab you". Mamkize said, "Don't play the fool with me: you are drunk. I have no men running after me."

30 (7) Obed went back to his room and "I had scarcely sat down" before Shozi came to report. Judith had then come out of her room. The crying and wailing had started.

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"A person has been killed". She (Judith) heard Elizabeth say, "Father, you have killed my lover" - that was from Shoji's room. The evidence of Selina and Eunice is to this effect. Shoji said Elizabeth said, "Oh father you have killed the child of another man". Accused said that Elizabeth said, "I am crying because I can see that this man who is dead is my lover." There is room for mistake here of course. Elizabeth, who was called by the Court, simply said that she was crying, and in answer to the accused's question whether she knew the deceased she said, "Yes, he is my lover."

On the evidence of Judith, which is corroborated by all the circumstances, there can be no doubt whatsoever that accused, although he only struck deceased with a sjambok outside his room, pursued and stabbed him outside Judith's room.

We accept Judith's evidence. She appeared to be impartial and reliable and created the impression she was speaking the truth. We disbelieve the accused when he said he did not come up the bank from Judith's room; Elizabeth and Ntombeza say he did and we believe them.

As stated, in our view therefore, the proved facts are such that they exclude every reasonable inference from them save the one that it was the accused who stabbed and killed the deceased. He is, therefore, found guilty of the charge.

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