

IN THE HIGH COURT OF SWAZILAND

In the matter of: Criminal Case Ho. 3/82

REX

VS

1. MBHOKANE NGWEHYA
2. GAGE FAKUDZE
3. MBIJANE FAKUDZE
4. MBAKWANE FAKUDZE
5. DANTE HLATSHWAYO
6. THEMBA MSIBI
7. JEREMIAH SEYAMA

CORAM: NATEAN C.J.

FOR CROW: MR THWALA

FOR DEFENCE: ME. MATHSE FOR NO.1 AND 7 ACCUSED

MR. MALINGA FOR NO. 2-6 ACCUSED

JUDGEMENT ON EXTENUATING CIRCUMSTANCES

Delivered on 18th June, 1982)

NATHAH C.J.

The seven Accused have been found guilty of murder.

Mr. Malinga, who at this stage of the trial appeared for all of them, stated, after an adjournment to enable him to consult with the Accused, that none of them wished to give evidence on the question of any extenuating circumstances.

He submitted, in regard to Accuseds Nos 2 and 3 that the Court was entitled, on the evidence before it, to find

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extenuating circumstances by reason of the drink they had consumed at Mankayane before the actual killing. In my opinion this is far from sufficient to constitute an extenuating circumstance.

Mr. Malinga submitted in regard to No.6 Accused, in response to a query by the Court, that there were extenuating circumstances in that at the eleventh hour No.6 Accused had attempted to persuade his co-Accused not to kill the deceased and had largely dissociated himself therefrom. Mr. Thwala for the Crown countered this by the submission that No.6 Accused had been one of the prime instigators and planners of the killing, and that it was he who had the vehicle in which the deceased was to be conveyed, and that he could and should have made off with the vehicle if he really did not wish the killing to take place. The

mere fact that No.6 Accused did not wish to witness the actual killing does not, so it was submitted, amount to an extenuating circumstance.

It seems to me that Mr. Thwala's submission is correct. In arriving at this conclusion I bear in mind that the onus of establishing extenuating circumstances rest on the Accused and Accused No.6 has not seen fit to give any evidence on this question.

In the result I find no extenuating circumstances to have been present in the case of any of the Accused.

C. J. M. NATHAN

CHIEF JUSTICE