

IN THE COURT OF APPEAL OF SWAZILAND

APPEAL CASE NO.26/82

In the matter between:

SIPHO WILSON MAMBA APPELLANT

vs

BEGEM RESPONDENT

CORAM: YOUNG P

ISAACS J A

AARON J A

JUDGMENT

ISAACS J A

The Appellant in this matter was charged with the murder of one Amos Masina. A plea of guilty of Culpable Homicide was tendered on his behalf, which plea was accepted by the Crown.

According to the evidence outlined by the Counsel for the Crown which was very much in accordance with his statement made to a magistrate, the Appellant had lent a sum of E10 to the deceased. About two months after he had lent this money it was still not repaid, and the Appellant asked for this sum to be paid to him. The deceased had promised to repay it when his son had come home from Manzini where he worked. Although the son had apparently returned the money was still unpaid and when the appellant asked for the loan to be repaid the deceased told him to stop nagging him, and according to his statement the deceased had threatened to kill him. On the day alleged that the crime

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occurred - the 14th of March, 1982, the Appellant had met the deceased, saw that he was very drunk and thought this was his chance and he hit the deceased with his knobstick on the head. The stick broke and he then took the deceased's knobstick and hit the deceased again on the head twice. There is no doubt on the doctor's evidence that the deceased died as a result of these blows.

The Appellant was sentenced by Mr. Justice Hassanali to imprisonment for nine years and this appeal is against what he states the severity of the sentence.

The Appellant appeared in this Court on his own behalf and he says that the sentence is too severe under the circumstances. My learned brothers and myself have considered this matter very carefully. We came to the conclusion that the Appellant is very lucky that a plea of Culpable Homicide was accepted. It seems to us that it was more of murder with, perhaps, extenuating circumstances. With regard to the severity of the sentence perhaps if I personally had been sitting as a Judge of first instance I might have imposed a somewhat lesser sentence. But I cannot say that the sentence I would have imposed is of so striking a disparity between the actual sentence imposed by the learned trial Judge as to give this Court the right to interfere with the sentence.

Under the circumstance I would dismiss the Appeal and confirm the conviction and sentence.

SIGNED _____

I. ISAACS

JUDGE OF THE COURT OF APPEAL

I agree:

SIGNED _____

D. YOUNG

PRESIDENT OF THE COURT OF APPEAL

I agree:

SIGNED _____

S. AARON

JUDGE OF THE COURT OF APPEAL