

IN THE APPEAL COURT OF SWAZILAND

In the Appeal of APPEAL NO. 14/1981

JOSEPH GAMA (Appellant)

vs.

REGEM (Respondent)

CORAM: Maisels J.P.

Mohammed J.A.

Dendy Young J.A.

FOR CROWN: Mr. Masina

FOR DEFENCE: Mr. Lukhele

JUDGMENT

(Delivered 26 Jan. 1982 )

Dendy Young J.A.

Appellant was charged with the crime of murder, the allegation being that he wrongfully and maliciously caused the death of one Rana by striking him on the head with a knobstick. It appears that the blow was struck on 1st November 1980 and that death ensued on the 12th November 1980.

A plea of not guilty to murder was entered, but in the course of the trial Appellant tendered a plea of guilty to Culpable Homicide which was accepted by the prosecution.

Appellant was found guilty of Culpable Homicide and sentenced to imprisonment for 5 years.

He appealed against the sentence. This court allowed his appeal to the extent of suspending half of the sentence for a period of 3 years on condition that Appellant is not convicted of any crime of violence in respect of which he is sentenced to imprisonment without the option of a fine for more than 3 months.

2

The following are our reasons for interfering with the High Court sentence.

The Post Mortem report established that deceased had died from cerebral hemorrhage following on fractures of the skull. The injury was consistent with a blow from a knobstick.

Deceased was at the time staying at Appellant's home. He was the boy-friend of one Christinah, a relative of the deceased. Deceased and Christinah apparently occupied a bed which belonged to Christinah.

On 1st November 1980 deceased entered the room and began dismantling the bed. When appellant heard what was happening he went into Christinah's room and asked deceased if he was dismantling the bed or merely tightening it. Deceased replied that it was none of Appellant's business and said "keep quiet". Appellant warned deceased that if he dismantled the bed he and deceased would quarrel. Deceased did not stop. Appellant shouted to Sabelo (a young son of 8 years) to bring Appellant's knobstick. The boy did so. Appellant again remonstrated with deceased without result and then gave him a blow on the head with the stick. At that moment deceased was facing downwards no doubt busy with the bed. Deceased fell down and lay there. Later Appellant came back into the room and helped deceased up. Appellant and deceased walked away. Appellant had been drinking but there is no suggestion that he was drunk.

In his heads of argument in support of the appeal Mr. Dunseith submitted that the sentence is so severe as to be unjust. He listed the following mitigating factors.

1) There was provocation. Deceased was a young man of 23 and he used insulting language to an adult of 43 years. Swazi custom frowns upon such conduct.

3

2) Deceased was interfering with the bed which belonged to a member of Appellant's family. It may be that Appellant felt he was entitled to prevent the dismantling of the bed by force if necessary.

3) Appellant had been drinking and lost his temper.

4) Appellant struck one blow and thereafter walked away.

5) Later when it seemed that deceased may have been hurt more severely than was originally thought, Appellant went to his assistance.

6) Appellant was in custody awaiting trial for 6 months.

On the other hand there are aggravating features which must be put in the balance against the mitigating factors. These are -

1) The blow with the stick was obviously pre-meditated.

2) Appellant took the law into his own hands and resorted to violence. The violence was excessive and unfair. He apparently hit deceased while the latter was not looking.

3) Appellant took human life, albeit unintentionally and this is a serious matter.

4) This is the second time Appellant has wrongfully caused loss of human life. There is a previous conviction for Culpable Homicide in 1972 which resulted from the driving of a motor vehicle. The Appellant was then sentenced to 3 years imprisonment which indicates that serious view was taken of the matter.

4

Nevertheless in all the circumstances this Court felt that a sentence of 5 years was substantially heavier than this Court would have imposed. This justified the variation of the sentence by this Court. Accordingly the sentence set out above was imposed.

DENDY YOUNG J. A

COURT OF APPEAL JUDGE

I agree:

MAISELS J.P.

JUDGE PRESIDENT

I agree:

MOHAMMED J.A.

COURT OF APPEAL JUDGE