

IN THE APPEAL COURT OF SWAZILAND

In the Appeal of: APP. O. 21/82

MBHOKANE NGWENYA

GAGE FAKUDZE

MBIJANE MSIBI

MDAKWANE FAKUDZE

DANTE HLATSHWAYO

THEMBA MSIBI

JEREMIAH SEYAMA

vs.

THE QUEEN

CORAM: ISAACS, J.A.

WELSH, J. A.

AARON, J.A.

Delivered on 1st June, 1983

JUDGMENT

AARON, J.A.

The Appellants were convicted of having murdered James Bakhulu Fakudze on the 13th July, 1979. The evidence which was led showed that the body of the deceased had been found lying on the concrete embankment alongside a road on the next day. The only witness who testified as to the actual killing was a woman Lomasonto Msibi. She had previously been convicted by the High Court as an accomplice to the murder, and had been sentenced to three years imprisonment for her part in the crime. She had not given evidence at her own trial, but a statement which she had made to a Magistrate was handed in. This statement formed the basis of part of her cross-examination in the trial of the present Appellants.

The main elements of her evidence in this case were the following. She told the Court that she used to earn money by brewing beer and that the deceased who was working at a school at Matsapha would sometimes come and buy beer at her homestead.

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She stated that during a short period before the day of the killing, she had been approached on various occasions by Appellants Nos. 5 and 6 who asked her to prepare some beer so that it

would be ready when the deceased returned from Matsapa at the end of the week.

She said that she declined to do so. The only relevance of this evidence was to try to show that there had been some prior plotting by Appellants Nos. 5 and 6.

She went on to tell the court that on the day before the killing, she was again approached by No. 5 who told her that they were arranging for the deceased to travel on a bus which would be stopping at a place named Mankayane. In order to get the deceased onto the bus, they would arrange for his brother, Appellant No. 4, to go to the school where he worked and to try to arrange for the deceased to be let off work earlier that day. Appellant No. 4 would then bring the deceased on the bus as far as Mankayane. She was asked to be waiting at the bus stop at Mankayane and to help persuade the deceased to alight from the bus at that stop.

She says that she did go to Mankayane the next day and she found Appellants No. 1, 2, 3 and 7 already there. The bus duly arrived but it was not necessary for her to persuade the deceased to get off because Appellants Nos. 4 and 5 managed by themselves to bring the deceased off the bus. She says the deceased was already drunk and they brought him under some guava trees where they made him to sit down and they gave him some more to drink. Appellant No. 6 then joined them there.. She says the bus then left but the deceased was left behind. After the bus had gone Appellant No. 6 went to fetch his van, and all 9 of them got into the van. That is, the 7 Appellants, the deceased and Lomasonto. She says a van was then driven to a spot alongside the river and