

IN THE APPEAL COURT OF SWAZILAND

APPL. CASE NO. 27/83

In the matter of:

MAHLABANDZABA MAGAGULA

vs

THE QUEEN

CORAM: MISELS J.P.

ISAACS J.A.

VAN WINSEN J.A.

JUDGEMENT

(18/6/84)

VAN WINSSN J.A.

Appellant was charged with the murder of one Mbulawa Magagula, but was found guilty of culpable homicide and sentenced to 5 years imprisonment. Appellant appeals against both conviction and sentence.

Appellant was one of three accused one of whom was found not guilty and the other convicted of being an accessory after the fact.

On the day of the crime there was a marula drink party at the homestead of Sikoshi. The Crown produced evidence to the effect that Appellant and his two co-accused together with a number of the Crown witnesses as well as the deceased were present. It was Appellant's case that he was not present on that occasion and that he had had nothing to do with the death of the Deceased.

The Crown evidence established that enmity existed between the Appellant and the Deceased in regard to the fact that Appellant had not been appointed an heir upon the death of his father Sikoshi. In addition there is evidence that at the drink party in question Appellant and the Deceased quarrelled about money and food which the Deceased accused the Appellant of having stolen from him. Appellant

2

in response threatened to kill the Deceased.

There is ample evidence from three witnesses, who were believed by the trial court, that Appellant was present on that occasion and his denial that he was there was rejected by that court. No reason has been advanced why this court should differ from this finding.

The remaining issue, therefore, is whether the Crown has proved that some action on the part of Appellant caused the death of the Deceased. Two of the witnesses referred to above, viz

Lozinyanga Dlamini and Ntfombitodvwa Magagula testified that Appellant had struck Deceased on the head with a piece of firewood which caused the latter to fall. He hit him twice. There is no evidence as to the size of the piece of firewood and it was not produced as an exhibit at the trial. Lozinyanga stated in evidence that the Deceased was also assaulted by one of Appellant's co-accused who hit him on the cheek with his open hand. The witness Mfundisi Magagula, who was not at the drink party, returned to the Sikoshi home at about 8.00p.m. on the same day as that on which the party had been held. He found the Deceased, his father, in his sleeping hut apparently sleeping. The witness later heard Appellant and a co-accused talking to each other, the former saying to the latter "that he had killed this thing" and wanted his help to carry "this thing" and throw it into the Komati river. The witness saw Appellant and his co-accused put the Deceased into a wheelbarrow. He was warned by Appellant not to tell anyone of what he had seen. The trial judge found this witness to be credible.

The above evidence establishes that Appellant dealt the Deceased two blows to the head and that he had been rendered unconscious. Appellant claimed to have killed the Deceased and it was proved that with the assistance of a co-accused he had conveyed the Deceased in a wheelbarrow with the declared intention of dumping the contents of the wheelbarrow into the Komati river. The body of

3

the Deceased was never found and there is no evidence of the cause of death. A skull was found in a river and some clothing belonging to the Deceased was found in the same vicinity. Nevertheless there seems to be only one reasonable inference to be drawn from the above facts, viz that it was as a result of the actions of the Appellant that the deceased had died.

The appeal against the conviction accordingly fails. No ground has been advanced by Appellant on appeal for interfering with the sentence. Indeed he can consider himself fortunate to have been treated so leniently.

The Appeal against both conviction and sentence is accordingly dismissed.

I.A. MAISELS

JUDGE PRESIDENT

I agree

I. ISAACS

JUDGE OF APPEAL

I agree

L. de V. VAN WINSEN

JUDGE OF APPEAL