

IN THE COURT OF APPEAL OF SWAZILAND

CRIMINAL APPEAL NO.35/96

In the matter between:

JANE JERRY MHLANGA

VS

THE KING

CORAM

: STEYN JA

: SCHREINER JA

: LEON JA

FOR THE APPELLANT : IN PERSON

FOR THE CROWN : MS. NDERI

JUDGMENT

Steyn JA

You are a married woman with three young children who was found guilty of murder by Dunn J with extenuating circumstances. The sentence was 5 years' imprisonment to be calculated from the date of your arrest 29/12/95. The appeal is against the severity of the sentence.

The deceased was a youth of about 21 years of age. He was killed as a result of a single blow from a knife. The knife had a six inch blade. The blow was directed at the left side of the neck where it involved the left carotid artery, jugular vein and wind pipe. The circumstances surrounding the injury appeared to negative the submission by the appellant's evidence that the blow was accidental.

However it is true that it was inflicted during the course of a scuffle resulting from a heated argument.

The deceased had insulted and threatened the appellant.

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The Court found that the appellant, holding a knife with which he had been cutting a cabbage, followed the deceased into the street in order to question him about his behaviour. He was alleged to be threatening women who were, taking food to their men working in the plantation nearby. Insults were traded between the two of them and eventually the fatal stabbing took place.

It is clear that between the time of the initial argument and the stabbing there was a considerable period during which the appellant could have considered an action more appropriate to the degree of provocation. After the stabbing the appellant took a plank and broke windows from a nearby building in order to give false explanation for the death of the deceased. The court rejected the evidence of the appellant that the stabbing followed an assault by the deceased with his fists and planks. These alleged facts were not put to the Crown witnesses.

The conclusion reached by the Court was that the appellant set out to settle the issue of interfering

with the women carrying food to their men folks and in particular with the witness Khanyisile Sonto Matsenjwa. The Court deciding upon sentence took into account the personal situation of the appellant who has three small children and the fact that her parents also depended to some extent upon her working.

The learned Judge however, was concerned about the use of a knife which appears to have been a factor in a number of cases coming before Court. The appellant had tried to cover up her crime by creating a situation which would be thought that the deceased had been responsible for smashing the

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windows.

The learned Judge did not overlook the fact that the death of a young deceased person no doubt caused pain to his relations. A life had been taken by irresponsible act which is not in any way justified by the circumstances in the case. I am unable to find the basis for criticism of the sentence, it seems to be appropriate. I would dismiss the appeal and confirm the sentence.

J .H STEYN J A

I agree :

W. H. R. SCHREINER J A

I agree :

R.N. LEON J A

Delivered on 4th April 1997.