



CRIMINAL APPEAL NO.22/97

In the matter between:

LUCKY NHLANHLA DLAMINI

VS

REX

CORAM

: KOTZÉ JP

: TEBBUTT JA

: BROWDE JA

FOR APPELLANT : IN PERSON

FOR RESPONDENT : MS. S. NDERI

JUDGMENT

23/09/97

Tebbutt JA

On 18th December 1995 at a shopping centre in Matsapa the deceased Anthony Nkwanyana was stabbed in the heart by the Appellant. He died as a result of the stab wound. The deceased also suffered a stab wound at the back.

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The Appellant was charged at the High Court with the murder of the deceased. He was convicted by Matsebula J of murder. The learned Judge however found that there were extenuating circumstances present and he accordingly sentenced the Appellant to 10 years' imprisonment.

The Appellant now appeals to this Court against this conviction and sentence. The Appellant did not deny at the trial that it was him who had stabbed the deceased nor does he do so on this occasion.

In the lower Court his defence was that he had stabbed the deceased accidentally. He did not persist with this at this Court but said that in view of the circumstances as it occurred there his conviction should have been one of culpable homicide and not murder.

The evidence as was given for the Crown at the trial has been well summarised by Matsebula J in his judgment. It was the evidence of one Thando Hleta who is PW1 at the trial. He said that on the 18th December 1995 he was at the shopping centre at Matsapa in the company of certain other men.

While there the deceased and accused both arrived at the scene. Hleta said that the deceased teased the Appellant by saying he wanted to see what was in the Appellant's pockets. Appellant thereupon threatened to stab the deceased and also to stab the other people in the vicinity. The Appellant then pulled out a knife and brandished it and as a result the people ran away. Hleta then said the Appellant started chasing after the deceased. The deceased ran behind the building and Hleta then went to where the deceased was and told him to go away by different route in order to avoid further contact

with the Appellant. He said he did this because he realised that the Appellant was under the influence of liquor. Hleta said that he then noticed the Appellant going towards the deceased and saw the deceased looking up at the Appellant who then struck

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at the deceased. He said that he formed the opinion that the Appellant had stabbed the deceased.

The deceased tried to run away but the Appellant followed him and stabbed him for the second time.

There was also some argument at about that time with the witness PW3 Senzo Motsa who demanded payment from the Appellant of money for some takkies. Motsa also said he saw the Appellant approach the deceased and said that he saw the Appellant stab the deceased. The deceased fell down and when he rose he tried to get away, the Appellant stabbed him for the second time. He said the first stab was directed at the front of the deceased and the second time it was at his back. This witness denied that the deceased had snatched any of the Appellant's money from him. He also denied that the deceased had a knife or that the deceased had tried to stab the Appellant.

The Appellant's version of what occurred was the following:

He said that he met these people at the shopping centre and that the deceased had asked him for E10. He told him he did not have any money. He said that the deceased then forced his hand into his pockets but he grabbed hold of the deceased's hand and the deceased then ran away. He chased him for a short distance but then came back to talk to PW3 Menzi Motsa who was asking him for E10 in respect of the purchase of the takkies. He said that at that stage the deceased came and snatched E500 from the pocket of his leather jacket he was wearing and ran away. He said he chased after the deceased who turned and struck at him with a knife in his hands. He said he tried to frighten the deceased with his own knife but in the process he stabbed the deceased at the back.

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That, in brief was the evidence that was given before the learned trial Judge.

The learned trial Judge carefully analysed the evidence given by the Crown witnesses as well as by the appellant; and he rejected the evidence of the Appellant for a number of reasons.

In the first place, he found that there was explanation by the Appellant as to how the deceased got the stab-wound in the chest. Secondly, the Appellant had said that he pulled the knife out of his shorts while he was in the process of running after the deceased and the learned trial Judge could not understand how that happened. Thirdly, the demonstration which was given by the Appellant as to how he stabbed the deceased on the back was not possible for him to have done that.

The learned trial Judge had the opportunity of seeing the witnesses including the appellant and he believed the Crown witnesses and rejected the evidence of the Appellant, in my view, correctly so.

In his appeal before us here he says that there were discrepancies in the evidence between PW1, Hleta and PW3 Motsa. As pointed out by Ms. Nderi in her heads of argument on behalf of the Crown there was no material contradiction between the evidence of these two witnesses. The sole discrepancy was the question as to whether or not Motsa was present with Hleta at the stage when the first chase took place. As she points out this is of no consequence to the crucial question as to why the Appellant should have stabbed the deceased on these two occasions.

The Appellant was legally represented at the trial and these contradictions were also referred to

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by his counsel then. As pointed out by the learned Judge in his judgment, the contradictions are not such that they go to the core of the defence version but the evidence was corroborative on the main

issues of how the deceased received the fatal stab injuries.

Having regard to the circumstances of the occurrence there is no room for the findings that the Appellant was guilty merely of culpable homicide. He was indeed correctly found guilty of murder with extenuating circumstances.

His appeal against his conviction must therefore fail.

On the question of sentence the learned Judge took into account all factors in Appellant's favour. He considered the fact that the Appellant was under the influence of liquor at the time, he took into account the fact that the Appellant had killed a man who was a friend of his and for that the Appellant was indeed remorseful. The Appellant also apologised to this Court for what he had done. He took into account the fact that the Appellant youthful, 21 years of age. He also took into account the fact that the Appellant had certain previous convictions including one of robbery.

The learned Judge said in his remarks on sentence that he had many cases at that time when this matter came about where young people went about carrying knives and killing other people. The use of a knife in fights of this sort had to be deplored by the Court and the Court would not condone that sort of offence. I agree wholeheartedly with the trial Judge.

The sentence of 10 years' imprisonment under these circumstances was one which the Court was fully entitled to impose. The question of sentence is in the discretion of the trial Court and this

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Court would not interfere unless there is misdirection or the sentence is in this Court's view inappropriate. There is no misdirection by the trial Judge as I have indicated, he took all the factors into account and I do not find the sentence inappropriate.

The appeal against the sentence must also fail and in the result the appeal is dismissed and the conviction and sentence Confirmed.

P.H. TEBBUTT JA

I agree :

G.P.C. KOTZÉ JP

I agree :

J. BROWDE JA

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