

IN THE COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE

CRIMINAL APPEAL NO.20/97

In the matter between:

THE KING RESPONDENT

vs

MAVELA SIPHO MAHLALELA APPELLANT

CORAM

: SCHREINER JA

: LEON JA

: STEYN JA

FOR APPELLANT : IN PERSON

FOR RESPONDENT : MR D. WACHIRA

JUDGEMENT

Steyn JA:

You were convicted in the court below on two counts. One was that you had intentionally killed your brother. The second count upon which you appeared is that you had assaulted, with the same knife as you stabbed your brother, your sister by stabbing her on the knee. You were convicted of, in respect of the first count, murder with extenuating circumstances and were also convicted of the assault upon your sister. The two counts were taken as one for purposes of sentence and you were sentenced to nine (9) years imprisonment. You have written to us on the 24th March, 1997 and you have appealed against the severity of the sentence that was imposed upon you. You contended that the court had not taken into account the fact that you were under the influence of liquor at the time you committed the crimes in question.

It is true that there was evidence that you had drunk liquor called marula but it appeared to me that the court took that factor into account when it sentenced you. You also said that the court should have taken into account certain factors which you mention in your letter concerning the

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bad relations in your family. You also mentioned certain subjective factors such as the fact that you have three (3) children and that they have no mother to look after them. All these factors are important to be taken into consideration when one assesses the correctness of the sentence imposed by the court below.

On the other hand, the crime that you committed is a very serious one. There is no way that we can bring your brother back to life. You killed him over a trivial dispute about the use of a hoe. You had ample opportunity to stop the assault upon the deceased because you first threw a stone at him and when that didn't strike him you had recourse to a knife and stabbed him twice. When your sister tried to stop you and to desist, you stabbed her as well.

Taking into account all the circumstances, in other words the personal circumstances to which you had referred as well as the seriousness of the crime of stabbing your brother to death and of stabbing your sister, it is my view that the sentence imposed by the High Court upon you is perfectly appropriate and that no grounds exist for this court to interfere with the sentence that the court imposed in respect of both offences of which you were convicted. In these circumstances the convictions are confirmed and the sentence of nine (9) years imprisonment imposed upon you in respect of the two offences taken together is also confirmed. It follows therefore that the appeal is dismissed and the convictions and sentence are confirmed.

J.H. STEYN JA

I agree :

W. H. R. SCHREINER JA

I agree :

R.N. LEON JA

Delivered on the 23rd September, 1997.