

IN THE COURT OF APPEAL OF SWAZILAND

APPEAL CASE NO. 21/1997

In the matter between

Mandla M. Mndzebele Appellant

vs

Rex Respondent

Coram

Kotze, JP

Tebbutt, JA

Browde, JA

For Appellant Mr. Mkhathswa

For Crown Mr. M. Langwenya

JUDGMENT

(24/09/97)

KOTZE, JP

The appellant was charged in the High Court with the crime of murder in that on the 10th of February, 1996 he unlawfully and intentionally killed Solomon Jozini Mkhonta. He was tried by the Acting Chief Justice, found guilty as charged despite his plea of not guilty and he was sentenced to 12 years imprisonment. The learned Chief Justice described the facts of the case as bizarre. The evidence revealed that during the night of the 10th February, 1996 a night vigil was held. The vigil was in connection with the burial of the appellant's uncle one Fakudze which was to take

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place the following day. His body was inside the house where the appellant and many other people were present. Mkhonta was an old man aged 72. The appellant was aggrieved that his uncle was dead and he believed that the wife of the deceased caused the uncle's death by the process of slow poisoning administered by the agency of poisoned avocado peas. The appellant resented the presence at the vigil of the deceased and endeavoured to arrange his departure through the agency of clergymen and others who were present at the vigil. His efforts were unsuccessful. The evidence established beyond any doubt that the appellant on the pretence of viewing the body fetched an iron rod with which it was also proved beyond all doubt he struck a fatal blow on head of the aged deceased. The appellant explained his conduct by suggesting that his religious further remedying possessed by the spirits and led him to the execution of his deed.

The Acting Chief Justice found, correctly in my view, that having regard to appellant's description of the motive which inspired his conduct he attended the consequences of his deed. This finding destroys the appellant's submission to us in the course of argument that the deceased may have been hurt accidentally or that the appellant lost his self-control. Apart from the appeal against the conviction the

appellant also addressed us in support of an appeal against his sentence. He contended that the sentence imposed upon him was severe and harsh, disturbingly inappropriate and that it leads to a sense of shock. He drew our attention to the fact that he is a first offender and a breadwinner of his family. And on these grounds he boasts the appeal against the severity of the sentence. I find that it cannot be said that the learned Acting Chief Justice misdirected himself in any way.

His remarks when imposing sentence show that he took into account only highly relevant considerations. He said "you delivered a fatal blow on this old man with

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an iron bar for no other reason than that you were incensed by the presence of this individual". After finding the existence of extenuating circumstances he said - "I am not obliged to pass this sentence I will but the sentence which I do pass must reflect the anger of society at which you have done. One cannot deliberately kill another human being and expect to get off lightly . I take into consideration your personal circumstances, but they are of little relevance to the sentence which I have to impose.

As much pity or sympathy I have for your dependants I would be failing in my duty to the public generally if I did not impose a heavy sentence of imprisonment. It must be a sentence as I say which reflects the seriousness of your offence. In imposing the sentence I also take into account that you have already been in prison since the date of your arrest. The sentence which I impose upon you is 12 years imprisonment to be deemed to have commenced from the 11th of February, 1996."

There are in my view no grounds upon which the sentence imposed by the Acting Chief Justice can be interfered with. The appeal is dismissed.

G.P.C. KOTZÉ, JP

I AGREE

P.H. TEBBUTT, JA

AND SO DO I

J. BROWDE, JA