

IN THE COURT OF APPEAL OF SWAZILAND

CRIMINAL APPEAL NO.9/96

In the matter between:

GAGAJANE DUMSANE GAMEDZE

VS

THE KING

CORAM

: STEYN J.A.

: SCHREINER J.A.

: TEBBUTT J.A.

FOR THE CROWN : MISS NDERI

FOR THE APPELLANT : MR. MAZIYA

JUDGMENT

Appellant was charged with and convicted on a charge of murder. Extenuating circumstances were found to be present and he was sentenced to 10 years' imprisonment. He now appeals against this sentence.

The Appellant advanced a number of personal circumstances which he contended should move the court to reduce the sentence. However, he urged us in his written submission to take into account other "serious extenuating circumstances" which the Court a quo had failed to place into the scale. In this regard he pointed to the previous aggressive conduct of the deceased towards him: the fact that the deceased had falsely accused him of having a sexual liason with the deceased's wife, and, most importantly that the deceased had

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in a scuffle which preceded the murder inflicted a penetrating stab-wound into his (the Appellant's) cheek. This caused him, as he put it, to "lose his sanity" -particularly as he was under the influence of liquor at the time.

This Court asked Ms. Nderi who appeared for the Crown to address us as amicus curiae on the question of sentence. She did so because regrettably, the trial Judge - the late Thwala J - had effectively denied Counsel who appeared for Appellant in the Court below, the opportunity of presenting any kind of coherent argument to the court. The Judge repeatedly interrupted Counsel, argued with him and harranged him in such a persistent manner that the hearing on sentence became farcical. Moreover in his findings on the existence of extenuating circumstances he says only the following:

JUDGE: You have been convicted of murder. What I have to find now is whether there are any extenuating circumstances. I have mentioned in my main judgment that you prepared for this murder and I have also considered that you received a stab wound before you committed the murder. There is evidence that you had taken liquor, this very day and this evidence is from the Crown witnesses.

And I have reluctantly come to the conclusion that because you were under the influence there are

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extenuating circumstances.

Miss Nderi very fairly pointed out that there was no reference to the false allegations levelled at the Appellant by the deceased, that the latter had assaulted Appellant by stabbing him in the cheek, had been the aggressor in the dispute between them and that it was this conduct that prompted the Appellant to collect the axe with which he assaulted and killed the deceased. The events were - as Miss Nderi indicated - a continuous series of acts without any extensive "cooling off period."

We are indebted to Miss Nderi for her fair and able submissions. We are, because of the unacceptable conduct of the Court a quo, at large to determine sentence afresh. Having regard to both the aggravating and extenuating circumstances we conclude that an appropriate sentence would be one of 7 years' imprisonment.

The conviction on a charge of murder is confirmed. The sentence of 10 years' imprisonment is set aside; in place thereof a sentence of 7 years' imprisonment is imposed. Sy is affective from 4th june 1994

J.H STEYN J.A

I agree:

W. H. R SCHREINER J.A.

I agree:

P.H. TEBBUTT J.A.

Delivered on this 74te day October 1996.