

IN THE COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE

CRIMINAL APPEAL NO. 17/97

In the matter between:

THE KING RESPONDENT

vs

JABULANE FAKUDZE APPELLANT

CORAM

: SCHREINER JA

: STEYN JA

: LEON JA

FOR APPELLANT : IN PERSON

FOR RESPONDENT : MR NSIBANDE

JUDGEMENT

Steyn JA

Mr Fakudze you were convicted in the High Court on a charge of murder and you were sentenced to eight (8) years imprisonment. You have written a letter to the court which was submitted as an appeal and you make it clear in your letter that you are appealing only against the sentence. You say that the sentence passed upon you is unreasonable and 'it leads to sense of shock'. You also contend that the Court of Appeal should consider that the children are alone at home and that there is no one to look after them. You also point to the fact that you are a first offender and that the court should have mercy on you because mercy is one of most component of justice. You asked that the court should reduce this sentence or suspend half of it.

The judge that presided in the court below has summarised the facts of this case and it is clear from his summary of the facts that the woman who you killed you had lived together with as man and wife for many years. According to the facts in the court below you were incense because your wife had slept out one night and you had gone to look for her. It is also clear that on this occasion you were under the influence of liquor and that as the judge found this must have

1

contributed to your conduct subsequently that day. It is clear that the deceased was also under the influence of liquor when you wanted to go home she wouldn't come home with you. In the end you got angry with her and you started assaulting her. The evidence of the two witnesses is that it was a protracted assault and that you persisted with the assault despite the fact that they called upon you to desist. It is clear from the medical evidence and the photographs of your wife's body that she was kicked to a pulp in a most brutal way and that it could only have occurred over a considerable period of time. The learned judge after summarising the facts took into account your personal circumstances, more particularly the fact that you are a first offender. And he went to the trouble of enquiring in relation to your family and how they will be for. It seems to me that he very anxiously took into account every relevant factor in determining what a proper sentence would be for you in respect of the crime

that you committed.

I should add that he rejected your version that somebody else had come along and inflicted other injuries on your wife that you had not inflicted. And in my view, quite rightly held you accountable for all the injuries which were found on the post-mortem to be present on the body of your wife. I must say, I can find no flaw his reasoning. It is fundamentally his duty to determine what an appropriate sentence should be. He has made no mistakes in assessing what factors he should take into account.

And although we share his concern about the fact that your family, your children in particular are suffering as a result of the fact that you must be in jail, in my opinion no good ground exist for interfering with the sentence that he imposed. In those circumstances the appeal against sentence is dismissed and the conviction and sentence are confirmed.

J.H STEYN JA

I agree :

W.H.R. SCHREINER JA

I agree :

R.N. LEON JA

Delivered on this.....day of September 1997.