

IN THE COURT OF APPEAL OF SWAZILAND

CRIMINAL APPEAL NO.30/97

In the matter between:

MAZOLWENI M. DLAMINI

VS

THE KING

CORAM : KOTZÉ J P

: LEON J A

: TEBBUTT J A

FOR THE APPELLANT : MR. TWALA

FOR THE CROWN : MS. NDERI

JUDGEMENT

When this appeal was called today Mr. Twala who appeared as counsel for the appellant originally asked for an adjournment until next week. However, when it was put to him the question which we said he did not have to answer as to whether there was any real merit in the appeal against the conviction, he readily conceded that there was indeed no merit in the appeal against the conviction and that was a concession in my view fairly and quite correctly made. He confined his argument solely and exclusively to the question of sentence.

The appellant was charged with murder to which he pleaded not guilty. He was found guilty of culpable homicide and sentenced to five years imprisonment. Counsel for the appellant has urged that having regard to the fact that the appellant is a first offender and that he himself assisted in conveying the appellant to hospital after the event the sentence of five years is inappropriate inasmuch as he contended that part of the sentence, indeed, a substantial part of it should be suspended, I might add that Mr. Twala did not rely upon any misdirection by the learned trial judge. The question of sentence was within the trial judge's discretion and we can only interfere if we are of the view that the sentence was strikingly or startlingly inappropriate. Put another way, the sentence which we would have imposed would have been strikingly different from that

1

imposed by the learned judge. I do not intend to recite the facts in any sort of detail because it is unnecessary to do so but this was a very bad case.

The appellant was at his shebeen and on arrival at the shebeen behaved in an extremely belligerent and aggressive fashion. He knocked off the beer of one of the drinkers, chased people with knives When he was dispossessed of the knife he then went into his house and returned with another knife. The deceased was quietly standing there minding his own business and without the slightest provocation, the deceased was stabbed in the chest by the appellant making

a backward movement.

In the reasons for judgement on sentence the learned judge took into account the fact that the appellant was a first offender but he drew attention to the fact that the appellant was not remorseful in the sense that his defence was a complete denial claiming that someone else had killed the deceased. He did not know who had done this. The learned judge went on to say: "In the circumstances I have to pass a sentence on you which reflects the gravity with which the community regards unlawful assaults with knives. The use of knives for fighting is a cause of misery in many houses and it was quite unnecessary for you that evening to arm yourself with a knife."

I pause to say that I entirely agree with those remarks. The judge went on to say: "As far as your personal circumstances are concerned you are a man who is well passed being a youth but you are relatively young. Your family circumstances are somewhat obscure." Earlier in his judgment, the learned judge also took into account the fact that the appellant had not run away. He took the deceased to hospital.

Having regard to the defence which the appellant raised and in that respect the absence of remorse on his part, the learned judge came to the conclusion, having regard to all the circumstances that it was not appropriate to suspend any part of his sentence. I entirely agree with the approach of the learned judge in this case. I think this is a very serious case indeed. Here is an innocent man doing nothing at all being suddenly struck down and killed by the appellant who earlier had shown signs of belligerent and aggressive and appalling behaviour. Indeed when someone asked him why

2

he stabbed the deceased he then proceeded to chase that person with a knife. He is a man who appears to have no respect for other people's lives or their well-being.

In all the circumstances of this case I am of the view:

(a) that the sentence of five years imprisonment is a proper sentence;

(b) that although in cases of first offenders sometimes the court does suspend a part of the sentence, there is no rule or law which obliges the court so to do, for each case must be judged on its own facts and its own circumstances.

In my judgement the learned judge was correct in not suspending any part of the sentence. It follows in my view that the appeal against both the conviction as well as the sentence must be dismissed and the conviction and sentence must be confirmed.

R.N. LEON J A

I agree:

G. P. C. KOTZÉ J P

I agree:

P.H. TEBBUTT J A

Delivered on the 16th April 1998.