



CRIMINAL APPEAL NO.2/98

In the matter between:

DERRICK JABULANE SIBISI

VS

THE KING

CORAM : SCHREINER J A

: LEON J A

: STEYN J A

FOR THE APPELLANT : IN PERSON

FOR THE CROWN : MR. L. NGARUA

JUDGEMENT

Schreiner J A:

The order we make is that leave of appeal is refused, save that it's granted in respect of the sentence. The sentence is altered to declare that it is to commence from the date of arrest.

W. H. R. SCHREINER J A

I agree:

R.N. LEON J A

I agree:

J. H. STEYN J A

Delivered on 21st April 1998.

1

IN THE COURT OF APPEAL OF SWAZILAND

CRIMINAL APPEAL NO.36/97

In the matter between;

THANDI F. DLAMINI VS

THE KING

CORAM : KOTZÉ J P

LEON J A

: BROWDE J A

FOR THE APPELLANT : IN PERSON

FOR THE CROWN : MR. J. MASEKO

JUDGEMENT

Leon J A:

In this case the counsel for the Crown Mr, Maseko very fairly as the Judge President has pointed out has left the matter in the hands of the Court.

The appellant was charged with murder. She was found guilty of murder with extenuating circumstances and sentenced to 12 years' imprisonment. The appellant appeared in person today and argued that the sentence should be reduced so that she could go home where she has no fewer than six children and no father to support them. She is also a first offender. However, I do not think we should take a technical view of this case and I do not think we should be prevented on technicalities from looking at the merits of the conviction as well

Very shortly stated, the facts are as follows:

1

It is common cause that the deceased owed the appellant money. It was not a large sum. There was a conflict on the Crown evidence as to the precise nature of the amount or the sum whereas the appellant says it was two emalangenji fifty cents (E2.50).

When she asked for her money which she was perfectly entitled to do, the deceased instead of answering her in a polite fashion and giving her the money, brushed her aside saying she had, 'given the money to them'. At that stage the appellant had been drinking traditional brew for about an hour. She must have been substantially affected by the liquor. In a sudden moment of anger provoked by the deceased's contemptuous conduct towards her, she stabbed him twice with a knife.

The learned Judge held that intention had been proved on the basis of *dolus eventualis*. There is often a very thin and sometimes a grey area between murder on the basis of *dolus eventualis* and culpable homicide. One must never lose sight of the fact that the onus lies squarely upon the Crown to prove an intention to kill either direct intention or in the form of *dolus eventualis*. When one has regard to the cumulative effect of the facts which I have briefly outlined, I have come to the conclusion that the Crown failed to prove that the appellant had the necessary intention to kill. In those circumstances, the appropriate verdict should have been one of culpable homicide. As was mentioned by my Brothers during the argument, this is indeed a tragic case. The appellant has six children at home one of whom the second youngest aged 14 has a job as a maid; they

are all from the same father whereas the appellant has a baby on her back aged eight (8) months from a different father. That baby was born in jail.

I think that although the killing of a person is always a serious matter which one never lose sight of I think that the proper sentence of this case would have been the one of eighteen (18) months imprisonment which the appellant has substantially served already. It follows in my view that the appeal must succeed. The conviction must be altered to one of culpable homicide and the conviction for murder must be set aside and the sentence must be reduced to one of eighteen (18) months imprisonment.

And I would add that I trust that this is the last occasion when the appellant will ever consider resorting to violence again. She must make every effort to control her drinking and her temper. If she is convicted again for a similar offence she runs the substantial danger of a very heavy

2

sentence indeed being imposed upon her.

R.N. LEON JA

I agree:

G. P. C. KOTZÉ J P

I agree:

J. BROWDE J A

Delivered on 21st April 1998.

3