

IN THE COURT OF APPEAL OF SWAZILAND

CRIMINAL APPEAL NO.37/97

In the matter between:

PETER B. DLAMINI

VS

THE KING

CORAM : SCHREINER J A

: LEON J A

: STEYN J A

FOR THE APPELLANT : MR. TWALA

FOR THE CROWN : MS. NDERI

JUDGEMENT

Steyn J A:

The appellant in this matter was convicted on a charge of murder with extenuating circumstances and sentenced to seven years' imprisonment with effect from 15th April 1996 being the date on which he was arrested.

He noted an appeal both against his conviction and his sentence. However, Mr. Twala who appeared for him today did not pursue the appeal against the conviction. He was perfectly correct in doing as it would appear from the facts, when I set them out, the case against the appellant was an overwhelming one and even on his own evidence the appellant was clearly guilty of the crime of which he was convicted.

The facts of the matter are the following:

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The appellant believed that the deceased was a wizard This belief had been fostered firstly by the death in succession of three of his relatives. He believed also that he would be the next to die. Secondly, the appellant's conviction that the deceased was a wizard was further strengthened by the fact that the deceased had been pointed out as a wizard by witch-finders. Accordingly and after attending the funeral of the last of his relatives he armed himself with a container of petrol and proceeded to the house of the deceased.

As the court quite correctly found, he intended to kill the deceased and to bum him using the petrol as an accelerator. As to what occurred when he arrived at the home of the deceased we are firstly obliged to rely on the evidence of a 10 year old who witnessed the events. Secondly, there are certain admissions made by the appellant especially in cross-examination when he

gave his evidence in the court below.

From this evidence it would appear that there was some kind of scuffle between the deceased and the appellant the nature of which however is unclear. What is common cause is that the appellant dispossessed the deceased of his bushknife, stabbed him with it and then proceeded to pour petrol over him and setting him alight thus bringing about his death.

As I have indicated above there could be no doubt that he was rightly convicted of murder. It is also clear that the court was correct in finding that the genuine belief under which the appellant laboured that the deceased was a wizard and had caused the death of his relatives and was about to kill him, were circumstances of an extenuating nature.

We are indebted to Mr. Twala for a well considered and well presented argument on the issue of sentence and we would like to thank him for the assistance he gave us in this matter. He pointed out that it was quite clear that the appellant believed in witchcraft, that the deceased was killing members of his family that although he was smelled out by witch finders he refused to leave the area, that he himself considered himself to be in jeopardy and had been informed by the deceased that he would be the next to die. These Mr. Twala submitted were extenuating circumstances associated with the state of mind of the appellant which would be sufficient to allow the Court to consider a reduction in the length of sentence imposed. He also pointed to the fact that the appellant had said in his evidence that he was under the influence of liquor at the time that he committed the offence.

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We have given due consideration to the submissions. In the first place it is clear that we cannot accede to the request made by Mr. Twala that the portion of the sentence should be suspended. The law does not permit us to do so.

When considering whether we should interfere in the sentence or not we have had regard to the comments made by the Judge in the court a quo. In his reasons, the Judge a quo pointed to the fact that the courts had an obligation to combat the prevalent belief in witchcraft which still exists in the Kingdom. He says; "it is a belief which as I pointed out the court have a responsibility of curbing." He goes on to say, "we cannot have people roaming about being influence by the diviners and witch finders into believing that all death is not due to natural causes and therefore people that are suspected of being witches and wizards or are practising should be destroyed." This seems to us to be an entirely appropriate consideration to take into account in determining a proper sentence.

The judgement is otherwise free of misdirection and whilst we have great understanding and sympathy with the appellant, in view of the fact that he clearly believed in witchcraft and that this impelled to commit the crime, we do not believe we can interfere with the sentence. For these reasons, the appeal is dismissed and the conviction and sentence are confirmed.

J.H. STEYN J A.

I agree:

W. H. R. SCHREINER J A

I agree:

R.N. LEON J A

Delivered on 22nd April 1998.