IN THE COURT OF APPEAL OF SWAZILAND

APPEAL CASE NO 6/1998

In the matter between

ISAAC MHLANGA Appellant

And THE KING Respondent

CORAM KOTZé, J P

SCHREINER, J A

BROWDE, J A

For Appellant In Person

For Crown Mrs. M. Dlamini

Judgment

(28/09/98

BROWDE, J A

In the court a quo the appellant was charged with murder the allegation being that on or about the 5th of September 1996 and at or near Nkanyezini Area in the Manzini District he unlawfully and intentionally killed Gabangani Zwane. The appellant pleaded guilty to culpable homicide and was found guilty in the High Court of murder with extenuating circumstances and sentenced to imprisonment for a period of 12 years. He has informed us that he wishes to appeal only against the sentence which was imposed on him. Mrs. Dlamini who appears for the crown has pointed out, correctly I think, that there is no misdirection on the part of the trial judge. The question remains, however, whether the sentence imposed by the trial judge is so heavy that we feel that it is not a sentence which in the circumstances should have been imposed. If the disparity between what the trial judge imposed and that which the appeal court feels should have been imposed in the circumstances is so great that it warrants interference by the appeal court then that will happen.

The facts of the case show that the deceased came to the place where the appellant was living and informed the appellant that he, the deceased, had assaulted the appellant's mother and wished him to leave the place which did not belong to him. This caused the appellant great anger, so he said, and although he had a very close relationship with the deceased he committed this very serious offence of striking the deceased on the head with an axe which led to the deceased's death. One must agree with the learned judge in saying that the appellant has to go to prison for what he called "a considerable period". On the accepted facts, however, we are of the view that this period imposed by the judge of 12 years is too long. He has told us that he is a man of 56 years of age and prior to this tragedy he had led a blameless life. There is no doubt (as the learned judge found) that the appellant was remorseful, that he was enraged and he acted in

the heat of the moment. Having regard to those facts we are of the view that the proper sentence which should have been imposed on the appellant was one of 7 years of imprisonment and therefore we believe that the disparity is great enough for us to interfere. Consequently I would uphold the appeal against the sentence and erase the last sentence in the learned judge's judgment which reads: "The sentence which I impose upon you is twelve years imprisonment to be deemed to have commenced on the date you were taken into custody which is the 5th of September 1996. " I would substitute therefore: "The sentence which is imposed is seven years imprisonment to be deemed to have commenced on the date that the appellant was taken into custody which is the 5th of September 1996."

J. BROWDE

I agree

G. P. C. KOTZé, J P

I agree

W. H. R. SCHREINER