

IN THE COURT OF APPEAL OF SWAZILAND

Appeal Case No. CA/35/1997

In the matter between

SIPHO SIMELANE

And

THE KING

CORAM KOTZÉ, J P

SCHREINER, J A

BROWDE, J A

For Appellant

For Crown

JUDGMENT

(30/09/98)

KOTZÉ, J P

This is an appeal against the severity of sentence imposed upon the appellant by MAPHALALA, J in the High Court.

The appellant was convicted on a charge of murder in that on 5/12/96 at Ngobelweni he unlawfully and intentionally killed Zodwa Khumalo by stabbing her with a knife.

Zodwa Khumalo and the appellant lived together as husband and wife. On 5th December, 1996, they were together in the hut in which they lived. Zodwa's mother-in-law, so-called, heard the deceased crying in the hut. She raised an alarm and soon thereafter the appellant and the deceased emerged from the hut. The deceased was covered in blood. The appellant was holding the deceased by her arm with his left hand. In his right hand he held a knife. The mother-in-law dispossessed him of the knife. It was a table knife. It is common cause that the deceased died as a result of multiple stab wounds. The doctor who conducted the post mortem report described her injuries as follows:-

1. Abrasion on the left ala of the nose
2. Stab wound on the left side of the neck slight transversely placed and involving muscles, the left-carotid artery 3.7 cm deep cut downwards medially.
3. Adjacent to the injuries are incised wound 1 x 0.2 cm skin deep.
4. Incised wounds under the left shoulder.

It is furthermore common cause that the appellant inflicted the wounds with the table knife which was sharpened on both sides with a very sharp point. The length of the blade was 8 centimeters.

The appellant gave his version to the trial court of the events which led to the death of the deceased. In this regard the learned Judge said the following:-

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"The Court has looked at the evidence in its totality and also considered the submissions by both counsel. It is common cause that the deceased died as a result of the stab wounds. It is also common cause that stab wounds were inflicted by the accused inside a hut belonging to them both. The only person who knows what happened that fateful afternoon is the accused. The other two witnesses (PW1 and PW2) did not tell us much to shed more light on what happened inside the hut. The two witnesses told the Court that the relationship between the two was harmonious. The defence submitted that the accused was provoked by the deceased and after that the deceased grabbed at him and he slapped at the deceased. The deceased pulled up a knife from underneath a pillow and she attempted to stab the accused, the accused was able to disarm her whereupon she grabbed at his testicles. He felt a lot of pain and reacted by lashing with the knife."

Regard being had to the apparent fact that the appellant did not introduce the knife into the hut and that the two persons, that is to say the appellant and the deceased, lived harmoniously together and that there was a measure of provocation I am of the view that the sentence imposed in the High Court was excessive and should be reduced from 12 years to 8 years.

It follows that the sentence of 12 years imprisonment is set aside and in its place is substituted a sentence of 8 years imprisonment backdated to 5th December, 1996.

G. P. C. KOTZÉ

I agree

SCHREINER, J A

I agree

BROWDE, J A

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