

IN THE COURT OF APPEAL OF SWAZILAND

APPEAL CASE NO.46/00

In the matter between:

JEREMIAH NKOSINATHI MAGAGULA

VS

REX

CORAM BROWDE JA

STEYN JA

ZIETSMAN JA

JUDGMENT

Steyn JA:

The appellant was convicted in the High Court on a charge of murder. Extenuating circumstances having been found he was sentenced to 10 years imprisonment.

It was common cause that the appellant had killed the deceased by stabbing her with a knife. In doing so he inflicted nine stab wounds on her person, four of which could have been fatal.

He appealed both against his conviction and the sentence of 10 years imprisonment. Both in his written argument filed of record and in his oral submissions, the appellant said that he had not intended to kill the deceased. He conceded that he was not justified in taking her life, but because he did not have the requisite intention to kill her, he contended that he should only have been convicted of culpable homicide.

2

The Crown case was the following. According to PW2 who was an eyewitness to the events, she saw the deceased, who had been sent on an errand together with other people walking down the street. The appellant then moved in between those people". He pushed the deceased, put his hand in his pocket, produced a knife and stabbed the deceased seven times. She also said that prior to the stabbing there had been no argument or quarrel among the people. She only heard the deceased exclaim: "I am going to die". She had heard nothing before that.

The witness confirmed that she knew both the deceased and the accused - they were neighbours. The deceased had a child by the appellant. When asked whether they lived together as man and wife, the witness replied as follows:

"The deceased actually would sometimes visit the accused's homestead for the purpose of preparing a meal for the accused, but then later the accused chased her away from his homestead".

She confirmed however that the deceased and the appellant were lovers and that the deceased

had been staying at the accused's homestead.

PW3, the deceased's cousin also testified. She, the accused and another, one Nokuthula, were sent to go to Tambankulu area. On a road leading towards the main road they came across the accused who "moved in" amongst their group. The accused then started pulling the deceased. They turned to report what was happening to their parents but the accused blocked their way. They walked a short distance when they heard the deceased raise an alarm - she was crying. They looked back and saw that the deceased was covered in blood. When they looked back she saw the accused running away. They then saw the deceased at the previous witness's house. She had already died.

3

This witness, whilst she admitted that the deceased had a child by the accused, denied that they were living together at the time. She said the accused had rejected the deceased and that she had returned to her home to stay.

The deceased's father was called. He confirmed that at the time of her death, the deceased was staying at home with him and had been doing so for the past year. They were, according to him no longer lovers. His daughter had told the accused in the presence of the indvuna of the area that she was no longer in love with him.

The appellant gave evidence. His version conflicted in material respects with that of the Crown witnesses. Save that he admitted that he stabbed the deceased, he deposed to the fact that he had a lengthy conversation with the deceased when they met. This then developed into a verbal altercation lasting some time. He had become very angry with her and because she uttered provocative words he had slapped her in the face. She then grabbed him by his testicles. When he saw that he was "losing some strength", he remembered that he had a knife in his pocket. Everything that then happened, happened very fast and he found that "it had already occurred".

None of these events had been put to the eyewitnesses testifying for the Crown. Appellant's evidence was therefore quite correctly rejected by the Chief Justice.

It is clear that the appellant was very angry when he came across the deceased. It is also clear that his conduct was that of someone who had lost control of himself and who had launched a determined attack on the deceased. However, bearing in mind the numerous stab-wounds inflicted on her upper body there can be no doubt that he intended to kill her. In my opinion, inflamed by jealousy, he had stabbed the deceased repeatedly causing her almost immediate death.

4

Viewing the evidence as a whole I have no doubt that the Chief Justice was right to convict the appellant of murder. The fact that the deceased must have been in a highly emotional state, in part attributable to the recently terminated relationship with the deceased was considered by the court aquo to constitute extenuating circumstances. The sentence of 10 years imprisonment, seen against the damning evidence set out above, can certainly not be described as too severe. For these reasons the appeal is dismissed and the conviction and sentence confirmed.

J.H STEYN JA

I AGREE

J.BROWDE JA

I AGREE

N. W ZIETSMAN

Delivered in open court on . 7th.day of May/June 2002