IN THE COURT OF APPEAL OF SWAZILAND

APPEAL CASE NO.6102

In the matter between:

BHEKI MALANSENI DLAMINI

VS

REX

CORAM BROWDE JA

STEYN JA

ZIETSMAN JA
JUDGEMENT

Steyn JA:

Appellant was convicted on two counts i.e. one of murder and one count of assault with intent to commit grievous bodily harm. He was found guilty and sentenced as follows:

1. On the murder charge - 10 years;

2. On the charge of assault with intent - 3 years.

The sentences were ordered to run concurrently. In effect therefore the appellant received a sentence of 10 years imprisonment. He noted an appeal both against his convictions and the sentences imposed upon him.

It is not in dispute that the appellant stabbed and killed the deceased. It is also not in dispute that he inflicted a serious knife wound

on the complainant in respect of the charge of aggravated assault. The principal challenge directed by the appellant in his personal submissions and in argument by his counsel, was that he should only have been convicted of culpable homicide not of murder. No argument was addressed to us on the conviction or sentence on the assault charge.

Miss Langwenya, Crown Counsel, in her heads of argument conceded that the court should have returned a verdict of guilty of culpable homicide, not murder. The evidence established that the appellant had consumed large quantities of alcohol and that he had only inflicted a single stab wound on the person of the deceased. As such it was reasonably possible that he did not foresee the possibility of his act causing the death of the deceased.

The record reflecting the findings of the court aquo is incomplete. However, as Mr. Mamba for the appellant very fairly conceded, the court had to approach the matter on the basis of the Crown evidence. Indeed the appellant's version was not only a most extraordinary one but clearly incapable of belief. Moreover his version as to how he came to stab the deceased was never put

in cross-examination.

On the Crown evidence it was the appellant who started the trouble with the deceased and his companions by his provocative conduct and bellicose behaviour. The evidence of the attack on the complainant on the assault charge was an unprovoked, gratuitous, separate act of serious violence which merits a severe sentence.

Viewing the conduct of the appellant as a whole I believe that the degree of his anti-social behaviour was such as to place in a category of the most serious class of culpable homicide. He must however be given the benefit of the fact that the degree of his moral guilt is lessened by the fact that he had been found not to have intended to kill the

deceased. I believe that the effective sentence can however not be substantially reduced bearing in mind the aggravating features referred to above, giving due weight to the fact that the appellant is a first offender.

The conviction on the charge of murder is set aside and in its place is substituted a verdict of "guilty of culpable homicide"'.

The sentence on this charge is one of eight years imprisonment.

The conviction on the charge of assault with intent to do grievous bodily harm and the sentence of three years imprisonment on this charge is confirmed. However this sentence is to run concurrently with the sentence imposed on the charge of culpable homicide. The sentence is back-dated to the 29th of August 1999.

STEYN JA

I AGREE

J. BROWDE JA

I AGREE

N.W. ZIETSMAN JA

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