IN THE COURT OF APPEAL OF SWAZILAND

HELD AT MBABANE APPEAL CASE NO. 4/2006

In the matter between

NOAH MKHULISI TSABEDZE

Versus

REX

Coram: BROWDE, AJP
TEBBUTT, JA
ZIETSMAN, JA

JUDGMENT

BROWDE, AJP

[1] The appellant was charged before the High Court (Annandale ACJ) with murder, it being alleged that on or about 23 December 2003 and at or near Sigangeni area in the Hhohho Region, he unlawfully and intentionally killed SAMKELISIWE D LAD LA. He tendered a plea of guilty to culpable homicide but as that plea was not accepted by the Crown, the trial for murder was proceeded with and evidence adduced to support that charge.

[2] The learned judge convicted the appellant of murder and, after finding that there were extenuating circumstances involved in the commission of the offence, he sentenced the appellant to imprisonment for 12 years. This appeal has been argued before us against both the conviction and sentence.

[3] It is common cause that on the date and at the place alleged in the indictment the appellant stabbed the deceased to death. It was submitted by his counsel that the Crown evidence did not prove an intention to kill and that the appellant should have been found to have caused the deceased's death negligently and not intentionally. The evidence showed, however, that the appellant inflicted twelve stab wounds on the body of the deceased with a large-bladed knife and that at least three of the wounds were so deep that each could have been fatal. There was also evidence of a struggle by the deceased to protect herself against the onslaught by the appellant. The learned Acting Chief Justice put it thus:-

> "*By all indications available to this court, established and uncontroverted evidence is that the incident was not an instantaneous affair. It was at minimum protracted to the extent that in various places of the house of the deceased pools of blood were found and also blood against the walls. The deceased tried to defend herself at least in two manifest ways by trying to get hold of or take the knife used against her and also scratching the body of the accused.*"

It is not surprising, therefore, that the learned judge found

> that "if the appellant did not have the *dolus directus* at minimum it would be *dolus eventualis*". In the light of the evidence, fully set out and carefully analysed by the learned judge, the verdict of murder was clearly the correct one.

[4] As far as the sentence is concerned, the finding in the court *a quo* of extenuating circumstances was arrived at after both defence and Crown counsel expressed the view that there were such circumstances. They related to the fact that the appellant was apparently jealous when he perceived that the deceased, a woman he professed to love, and to whom he was married by Swazi custom, was intimately involved with another man. In arriving at the sentence he imposed, the learned judge referred, *inter alia,* to what he called double standards, since while he, the appellant, had "sought solace in the arms of a lover" shortly after his marriage to the deceased and an early separation, the appellant was beside himself and intolerant towards the deceased for doing the same thing. It was submitted that this overlooked what was Swazi Custom namely, that while a man could have one or more wives or lovers, a woman could only have one. If that is so, so the argument went, the court *a quo* erred in taking into account in arriving at the sentence the so-called double standards. In my view the sentence, having regard to the vicious attack on the deceased, was, if anything, a lenient one and the alleged misdirection, if it was one, did not result in the learned judge imposing a sentence which this court can properly interfere with.

[5] In the result the appeal is dismissed and the conviction

and sentence are confirmed.

J. BROWDE, AJP

I AGREE

P.H. TEBBUTT, JA

I AGREE

N.W. ZIETSMAN, JA

DELIVERED ON THE 15th DAY OF MAY, 2006