



**Belief in witchcraft - Appellant killing his aunt because he believed that she had caused the deaths of his family members by witchcraft - Belief in witchcraft constituting extenuating circumstances - Appeal against sentence of 12 years imprisonment.**

**RAMODIBEDI JA**

[1] A belief in witchcraft, an undoubtedly misguided belief for that matter, if I may so at the outset, is the central focus of the events leading up to this appeal.

**[2] The appellant was indicted for murder in the High Court (Matsebula J) on an allegation that upon or about 4 April 2004**

**and at or near Lushikishini area in the region of Manzini the appellant unlawfully and intentionally killed his aunt Mirriam Mhlanga (“the deceased”).**

[3] The record shows that when he was asked to plead to the charge, the appellant said the following:-

“I admit that deceased died at my hands accidentally without any intention on my part to kill her”.

**Counsel for the appellant promptly assured the trial court of his instructions to the effect that the appellant was unreservedly pleading guilty to culpable homicide. However, the Crown did not accept the plea. Hence a fully fledged trial proceeded.**

**[4] At the close of the proceedings, the appellant was found guilty of murder with extenuating circumstances. He was sentenced to twelve (12) years imprisonment. He has appealed to this**

**Court against both conviction and sentence.**

**[5] At the hearing of this appeal, however, the appellant did not seek to challenge the correctness of his conviction. He only directed his submissions at the sentence imposed by the trial court. In the light of this factor, therefore, an outline of the relevant facts will be confined to a bare minimum essential for the disposal of this matter.**

**[6] The case for the Crown is that on the night of 4 April 2004, the appellant viciously attacked the deceased at her house in full view of her eight year old granddaughter, Nomvula Mavuso(PW2). He hit the deceased twice with a knobstick on the head, fracturing her skull in the process. It is common cause that the deceased succumbed to her injuries. According to Dr.**

**R.M. Reddy (PW3) who performed a post mortem on the deceased's body, the injuries could have been caused by a knobstick such as the one the appellant used on the deceased. The post mortem report shows that the cause of death was due to cranio-cerebral injury.**

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**[7] As alluded to earlier, the appellant sought to convey, at the trial, the impression that the deceased's death was accidental. He was however, confronted with his own confession to the contrary. This confession, I should add, was correctly found to have been freely and voluntarily made by the appellant in his full and sober senses. More importantly, it was handed in by consent as Exhibit "B" at the trial.**

**[8] In what may be summed up as a somewhat bizarre account, the appellant stated that the deceased had killed several of his**

**relatives by witchcraft. These included his own father, his senior uncle as well as his brother. The three last mentioned persons had died before a witchhunt, which had already been agreed upon at that stage, could be conducted. The appellant was now the next target of the deceased. He was now "also sick or fallen sick". He concludes the confession with the following chilling words:-**

**"Then I resolved to kill the witch who has killed my relatives as its obvious I am also next. I did so to preserve the remaining family members."**

**[9] In these circumstances the learned trial Judge was justified in accepting the appellant's version of events highlighted in his confession as opposed to his evidence at the trial. Similarly, the appellant's**

**conviction for murder cannot be faulted.**  
**On his own version, he had direct intention**  
**to kill the deceased.**

**[10] Surprisingly, the question whether**  
**there were extenuating circumstances by**  
**virtue of appellant's belief in witchcraft**  
**became a subject of some controversy in**  
**the court a quo. I point to the following**  
**remarks made by the learned trial Judge to**  
**defence counsel during the course of the**  
**appellant's evidence in chief:-**

**“DC: And was it just your family only**  
**who suspected Miriam or even the**  
**whole community suspected her?**

**Judge:You are leading and I**  
**don't know how it is**  
**going to help you**  
**because in terms of our**

**law until you and your colleagues in the law society [write] books that in fact this is a fact that bewitching is there but the present law say (sic) there is nothing like bewitching so you can talk until you are blue in your face I am not going to accept it because that is what the law says. That is what he objectively believes in but the law says there is nothing like that".**

**[11] After considering all the evidence in**



**the matter, the learned trial Judge correctly found, in my view, that the appellant's belief in witchcraft constituted an extenuating circumstance. Authorities in this regard are legion. See for example R v Fundakubi 1948 (3) SA 810 (A); Dlamini and Others v R 1970 - 76 SLR 42 (CA) at 43; Peter B. Dlamini v the King CA 37/97; Themba Enock Mabuyakhulu and Others v the King CA 24/2000.**

**[12] Reverting now to the question of sentence it is necessary to make a few observations. It is well-established that sentence lies primarily within the discretion of the trial court. In the absence of a misdirection resulting in a miscarriage of justice, this Court is generally loath to interfere with the trial court's discretion in the imposition of sentence, unless the sentence is grossly excessive.**

**[13] The learned trial Judge duly took into account all the mitigating factors urged on the appellant's behalf including his personal circumstances. On the other hand the Judge, as he was entitled to do, attached due weight to the fact that "murder remains a very serious crime". I should add that an innocent life was lost because of a misguided belief in witchcraft. Furthermore, the learned Judge commendably did not lose sight of the interests of society in the matter.**

**[14] It remains for me to point out that the phenomenon of people killing others because they believe them to be witches is ominous. Regrettably, it is a menace that continues to bedevil our jurisdictions in this part of the world.**

**[15] In Themba Enock Mabuyakhulu and**

**Others v the King (supra), a case in which the appellants killed the deceased because they believed he was a wizard, Leon JP had occasion to say the following:-**

**“In the case of PETER B. DLAMINI vs THE KING (Criminal Appeal No. 37/97) judgement was given by this Court on the 22<sup>nd</sup> April 1998. In that case the appellant was convicted of murder and this Court confirmed a sentence of seven years imprisonment. The facts in that case are set out by Steyn, JA (when giving the judgment of this court) as follows:-**

'The appellant believed that the deceased was a wizard. His belief had been fostered firstly by the death in succession of three of his relatives. He also believed that he would be the next to die. Secondly the appellant's conviction that the deceased was a wizard was further strengthened by the fact that the deceased had been pointed out as a wizard by witch-finders. Accordingly and after attending the funeral of the last of his relatives he armed himself with a container of petrol and proceeded to the home of the deceased.'

In the course of his judgment Steyn, JA emphasised that the courts have an obligation to combat the prevalent belief in witchcraft in this Kingdom, and that in that case there was evidence of people being implicated by diviners.

I respectfully agree that the courts do have the obligation referred to but it is interesting to note that in that case this court regarded a sentence of seven years imprisonment as being an appropriate sentence."

**I discern the need to add my voice to those remarks. It behoves the courts to step up the fight against this evil belief in witchcraft by imposing appropriately stiff sentences as a deterrent. Each case must, however, be treated on its own merits.**

**[16] In all the circumstances of the case I conclude that there is no merit in the appeal.**

**Accordingly the appeal is dismissed and the conviction and sentence are confirmed.**

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M.M. RAMODIBEDI

JUSTICE OF APPEAL

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I agree

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J. BROWDE  
JUSTICE OF APPEAL

I agree

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P.H. TEBBUTT  
JUSTICE OF APPEAL

**For Appellant : In person**

**For Respondent : Mr. P. Dlamini**