



IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

HELD AT MBABANE

Crim. App. No. 30/2012

In the appeal between:

BHEKI AMOS MKHALIPHI

Appellant

And

REX

Respondent

Neutral citation: *Bheki Amos Mkhalihi v Rex (30/2013) [2013] SZSC 59
(29 November 2013)*

Coram: **A.M. EBRAHIM JA, M.C.B. MAPHALALA JA and P.
LEVINSOHN J.A**

Heard: **11 November 2013**

Delivered: **29 November 2013**

Summary: Appellant convicted of murder of a young woman aged 26 years – sentenced to 18 years imprisonment. Not shown that *court a quo* misdirected itself in any way. Sentence confirmed.

JUDGMENT

P. LEVINSOHN

- [1] Consideration of the issues in this appeal has been complicated by the fact that crucial parts of the record of evidence and both the judgment on the merits and sentence could not be transcribed. The learned presiding judge was requested to attempt to reconstruct his judgments on the said issues. This court expresses its appreciation to him for providing us with a most helpful reconstruction which I believe, read with the available transcript provides us with sufficient of the relevant material to adequately consider the issues that arise in this appeal.
- [2] The appellant was convicted by the *court a quo* of the murder of his former girl friend one Lomkhosi Dlamini a female 26 years of age. He was sentenced to undergo 18 years imprisonment.
- [3] The appellant appeals against the sentence on the various grounds set forth in his notice of appeal.
- [4] It was common cause before the *court a quo* that the accused had inflicted the fatal stab wound - one which penetrated the deceased's chest. In all the

circumstances the court was satisfied that he was shown to have had the necessary intention to commit the crime of murder.

[5] It appears from the evidence accepted by the court *a quo* that the appellant angered by the deceased being in the company of another man on the evening in question chased after her and confronted her in her bedroom. He then stabbed her. The appellant's assertion that he did not have the necessary intention to kill was in my view rightly rejected by the learned judge in the *court a quo*.

[6] There is no indication on the available transcript or the reconstruction notes that the court *a quo* considered the issue of whether extenuating circumstances were present. I shall assume for purposes of this judgment that such circumstances were found to have existed. These would presumably have been the accused's emotional upheaval, subjective provocation and jealousy on finding the deceased with another man.

[7] In passing sentence the learned judge rightly took into account that this was a serious case. The life of a young woman in the prime of her life had been gratuitously snuffed out in a brutal fashion. Violence against women is a matter of great concern to the community at large and sentences imposed on perpetrators should reflect it's rightful indignation at such crimes.

[8] In considering a proper sentence the learned judge indicated that he undoubtedly took into account various mitigating circumstances. These were that the appellant was aged thirty five years, a first offender, gainfully employed and a breadwinner supporting two children.

[9] Weighing the mitigating circumstances against those that present themselves as aggravating, I am not persuaded that the learned judge erred or misdirected himself in passing the sentence that he did. I find there is no striking disparity between the sentence passed and that which I would have passed had I been sitting at first instance.

[10] Indeed, as has been said over and over in this court (I find it unnecessary to burden this judgment with the numerous authorities) an appeal court does not have a general equitable jurisdiction to ameliorate sentences. Its power to interfere with sentence is confined to well-recognized principles, namely where the sentence imposed induces a sense of shock, where there is a material misdirection and where, as indicated above, there is a striking disparity between the sentence passed by the court and the sentence that would have been passed by the appeal court had it been sitting at first instance.

[11] In the result the appeal is dismissed.

P. LEVINSOHN
JUSTICE OF APPEAL

I agree

M. C. B. MAPHALALA
JUSTICE OF APPEAL

I agree

A. M. EBRAHIM
JUSTICE OF APPEAL

For the Appellant :

In person

For the Crown :

DPP's Office

