



IN THE SUPREME COURT OF SWAZILAND

HELD AT MBABANE

JUDGMENT

Criminal Appeal No. 11/2012

In the matter between

SIBONISO SHONGWE

Appellant

And

REX

Respondent

Neutral citation: Siboniso Shongwe v *Rex* (11/2012) [2014]
SZSC 04 (30 May 2014)

Coram: RAMODIBEDI CJ, MOORE JA, and
MCB MAPHALALA JA

Heard: 2 MAY 2014

Delivered: 30 MAY 2014

Summary:

Criminal law – Murder – The appellant convicted of the murder of his girlfriend Tanele Fakudze whom she accused of having disappeared with his cellphone and ARV tablets – Sentenced to 18 years imprisonment – Appeal against sentence dismissed.

JUDGMENT

RAMODIBEDI CJ

[1] On 13 October 2011, and following his conviction for the murder of his girlfriend Tanele Fakudze (“the deceased”), the appellant was sentenced to eighteen (18) years imprisonment, backdated to 5 September 2009 being the date when he was arrested and taken into custody. He has appealed to this Court principally on the ground that this sentence is “too harsh and severe hence it induces a sense of shock.” He lays stress on the fact that he was a first offender who should have been treated less harshly as he submits. He accordingly pleads for the reduction of the sentence to ten (10) years imprisonment.

[2] The facts are hardly in dispute. On the fateful day of 4 September 2009, Detective Constable Thammy Mabuza (PW2) was patrolling Piggs Peak town in the company of one Detective Constable Mlangeni. They received a call over the police radio alerting them to a fight between two people behind the Piggs Peak bus rank. Upon arrival at the scene of crime they discovered that the two people in question were the appellant and the deceased. They saw the appellant hit the deceased with a brick on the head. He ran away upon seeing the two police officers. The deceased lay in a pool of blood severely injured. She was taken to hospital where she regrettably died on the same day.

[3] The post-mortem report revealed that the deceased's cause of death was due to cranio – cerebral injury. She had sustained horrific injuries. She had a fractured skull as well as fractured jaws with loosened teeth, all of which were plainly indicative of the brute force needlessly applied on her by the appellant.

[4] In his defence the appellant testified that whilst he was away doing a piece job in Mbabane the deceased disappeared from his home with his cellphone and his ARV tablets. Thereafter, he mounted a search for her until he finally spotted her at Pholane bar. She was not cooperative. Instead, she instructed four of her companions to assault him. He fled but the deceased followed him while boasting that her friends would kill him. When she finally caught up with him where he was hiding he assaulted her with an open hand. When he left her she was merely sitting down.

[5] As can be seen from this resume of facts the appellant tried to lie his way through the case. He was simply not remorseful. Instead of owning up to his heinous misdeed he raised fanciful stories. The *court a quo* correctly disbelieved him and convicted him of murder.

[6] In several of its decisions, this Court has repeatedly emphasised the trite principle that the imposition of sentence is a matter

which lies within the discretion of the trial court. An appellate court will generally not interfere in the absence of a material misdirection resulting in a miscarriage or failure of justice. See, for example, Vusumuzi Lucky Sigudla v Rex, Criminal Appeal No. 01/2011 and the cases cited therein.

[7] In passing sentence the trial court took into account the triad consisting of the offence, the offender and the interests of society. If there is any criticism to be made of that court's approach in this regard it is that it inexplicably omitted to consider the fact that the appellant was a first offender. Undoubtedly such an omission amounts to a misdirection. It is, however, not a material misdirection leading to a miscarriage or failure of justice in the particular circumstances of this case. This is so because even for a first offender the sentence of 18 years imprisonment is not so harsh as to be disproportionate to the heinous offence in the particular circumstances of this case. The offence does not, in my view, call for a lesser sentence than the one imposed by the trial court. On the contrary, and as I have stated before in

substantially similar cases such as **Sekoto v The Director of Public Prosecutions** [2007] 1 BLR 392 (CA) in the Court of Appeal of Botswana, it behoves the courts to step up their resolve to stamp out unbridled violence perpetrated by men against innocent and defenceless women by imposing appropriately stiff sentences as a deterrent. This is such a case.

[8] In all the circumstances of the case the appeal is accordingly dismissed.

M.M. RAMODIBEDI
CHIEF JUSTICE

I agree

S.A. MOORE
JUSTICE OF APPEAL

I agree

**MCB MAPHALALA
JUSTICE OF APPEAL**

For Appellant : In Person

For Respondent : Ms Q. Zwane