



IN THE SUPREME COURT OF SWAZILAND

JUDGMENT

Criminal Appeal Case No.32/2014

In the matter between:

BHUTIZA GIFT MATSEBULA

Appellant

vs

REX

Respondent

Neutral citation: *Bhutiza Gift Matsebula vs Rex (32/2014)*
[2014] SZSC 58 (3 December 2014)

Coram: A.M. Ebrahim JA
E.A. Ota JA
Dr. B.J. Odoki JA

Heard: 4 November 2014

Delivered: 3 December 2014

Summary: *Criminal Procedure – sentence – appellant convicted of one count of murder, two counts of attempted murder and one count of arson. He was sentenced to 20 years imprisonment on the count for murder and to 5 years imprisonment on each of the counts of attempted murder. The sentences on the murder*

charge and the two counts of attempted murder were ordered to run concurrently. The sentence of 5 years imprisonment was ordered to run consecutively with the three other counts. The appellant is to serve a period of 25 years imprisonment. The period of time spent in custody to be taken into account. Appeal dismissed.

JUDGMENT

EBRAHIM JA:

- [1] The appellant was convicted of murder with extenuating circumstances on count one and was sentenced to 20 years imprisonment and was also convicted of attempted murder on counts 2 and 3 and sentenced to 5 years imprisonment on each of these counts. In respect of count 4 for which he was convicted of arson he was sentenced to 5 years imprisonment. The sentences on count one and counts 2 and 3 were ordered to run concurrently and the sentence on count 4 was ordered to run consecutively with the sentences on counts 1, 2 and 3. The total sentence imposed was, therefore, one of 25 years imprisonment.
- [2] The facts which led to the demise of the deceased can best be gleaned from a statement made by the appellant to the

Magistrate on the 10 November 2011 and which forms part of the record.

[3] The statement is in the following terms:

“STATEMENT MADE BY GIFT BHUTIZA MATSEBULA

...

I do recall on the 4/11/11 at about 4pm, I was at my parental homestead at Khiza area when my friend Nduduzo Sithole came along and informed me that Makhosazana Hlophe who is the mother of my two kids was accusing me of having a love relationship with one Samu who is our fellow church-mate at the Zion Church at Khiza area. I do not recall the surname of Samu as she is not from our area but she is employed as a maid of the neighbouring homestead.

On the following day at about 9pm I proceeded to the parental homestead of Makhosazana Hlophe with whom I have two children aged two years and five years and they are a girl and a boy respectively. I enquired from her about what Ndumiso had told me and she informed me that she had heard rumours to that effect, but requested that we resolved the matter in a church forum.

I then contacted our pastor Mr. Passport Dlamini who resides at MacAlphine Township in Nhlangano and he agreed to help us resolve the issue and we made an appointment for 10am on 8/11/11. On the said day I duly proceeded to the pastor's house and stayed there till about 5pm but Makhosazana did not turn up. The pastor then advised me to approach Makhosazana at her parental homestead with the view of arranging for another meeting.

I passed by her place and her grandmother explained that she could not honour the appointment with me and our pastor as she was to assist a certain man who had come to plant in the fields at her parental homestead. We then agreed to see the pastor on the following day. Indeed we arrived at the pastor's house at 10am and the pastor heard our issues and resolved that he would involve our families in resolving our problems.

Our pastor is self-employed as a motor mechanic so I sometimes assist him with his chores. Whilst we were still there Makhosazana would taunt me saying she was going to frustrate me so that I would loose more weight than I already had. This she did when the pastor had finished talking to us and was busy fixing motor wheels. This infuriated me.

I then left the pastor's house at about 1pm and proceeded to town. I stayed in town with my friends till about 5pm when I got a lift which dropped me at T-junction Filling Station. I was carrying a container which I had borrowed from a kombi driver. I then bought petrol for E30.00 and proceeded home.

Later on that day I borrowed a size 10 handigas cylinder from Nduduzo. At about 1:00am that night I proceeded to the parental home of Makhosazana. I was carrying the petrol in the container, an empty bowl and the handigas cylinder. I went to the house that is used by Makhosazana and my kids for sleeping. I opened the bedroom window as a piece of the window pane is broken next to the window handle. I opened the window and threw the petrol on the bed which I poured into the empty bowl and set same on fire.

I then ran away leaving the handigas cylinder, empty contained outside the house and I had thrown the empty plastic bowl which contained petrol into the bedroom. I went to hide at the forest owned by the Shiselweni Forest Company till about 3pm on the following day, then I called my pastor and asked for his assistance as I was scared to go home for fear of being brutally assaulted by the mob for what I had done.

My pastor came to fetch me at the forest and took me to his house. He also asked his wife to fetch Makhosazana from her parental homestead so that I could apologise to her for what had happened. The wife obliged and brought Makhosazana and I apologised to her but she was non-committal as it turned out that she was not injured but my two children were critically injured and burnt and were fighting for their lives in hospital. My pastor then took me to Nhlanguano Police Station where I handed myself over to the police. I deeply regret what has happened.”

[4] Faced with these admissions of fact supported as this statement was by **viva voce** evidence the learned judge **a quo** convicted the appellant.

[5] The appellant has not appealed against his convictions but seeks a reduction of his sentence. In my view there is no sound basis for such reduction.

[6] This is a particularly serious case. The appellant at 1a.m. in the morning set alight his home in which his wife and two

infant children were asleep. His infant daughter of two years met her death and the infant boy aged 5 was badly burned.

[7] The appellant perpetrated a brutal and callous act which resulted in the loss of his two year old daughter and had a traumatic effect on his five year old son. He also attempted to murder his wife.

[8] He does not deserve any sympathy.

[9] Accordingly the appeal is dismissed in its entirety subject to the alteration that the period of 11 months and 23 days he spent in custody, prior to his conviction and sentence, is to be taken into account when determining the period of imprisonment he is to serve. This alteration has been necessitated as the learned judge **a quo** was under the impression that the appellant had only spent 23 days in custody before he was sentenced by him, but I have been advised by the Registrar that prior to his conviction he had been in custody for 11 months and 23 days.

A.M. EBRAHIM
JUSTICE OF APPEAL

I AGREE :

E.A. OTA
JUSTICE OF APPEAL

I AGREE :

DR. B.J. ODOKI
JUSTICE OF APPEAL

FOR THE APPELLANT : IN PERSON

FOR THE CROWN : N. MASUKU