

IN THE HIGH COURT OF SWAZILAND

In the matter of Crim. App. No. 9/81

Matshatshaweni Elliot Magagula

versus

REX

CORAM: NATHAN CJ.

CROWN: KRUPAVARAM

DEFENCE: PUPUMA

RECONSTRUCTION OF JUDGMENT

(Delivered on 23rd March, 1981)

NATHAN C.J.

1. The abovenamed Appellant was tried by me on 24th March, 1981 on a charge of murdering his wife, Sikhobo Maziya. He was defended by Mr. Pupuma and Mr. Krupavaram appeared for the Crown.

2. When called upon to plead the Accused stated that he did not intend to kill the deceased; it was an unfortunate occurrence Mr. Pupuma then tendered a plea of guilty of Culpable Homicide, which the Crown accepted.

3. I had read the Summary of Evidence, the Accused's statement to a Judicial Officer, and the post-mortem report of the Government Pathologist Dr. Khare.

In these circumstances it would have been competent for me in terms of Sec. 238 (1) of Act 67/1938 to sentence the Accused without hearing evidence.

4. In accordance with my practice, however, before entering the plea of Guilty to Culpable Homicide, I required the Crown to outline the case to me and the Defence to indicate to what extent it agreed or disagreed with such outline. I do this because in these cases where no evidence is to be led, it is advisable, so far as possible, to reach agreement in regard to the facts and background to the case and to sentence the Accused in the light thereof.

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5. Mr, Krupavaram. thereupon outlined the Crown case, basing himself mainly upon the Accused's confession, but adding that the Accused had beaten the deceased with a stick and strangled her.

Mr. Pupuma stated that he substantially accepted this outline, save in regard to the strangulation which he said the Accused did not admit.

6. As I was satisfied on the post-mortem report that the deceased had certainly been beaten to death by the Accused if not actually strangled, I entered a plea of Guilty of Culpable Homicide and brought in a verdict to that effect.

7. The Crown then proved a previous conviction against the Accused for assault, dated 23rd April, 1974, for which he received a sentence of R10 or one month's imprisonment.

8. Mr. Pupuma then addressed the Court in mitigation, stating that the Accused had been in custody since 3rd October, 1980; that he was aged 31; had one child; was a sugar cane cutter; and that he was penitent and had reported the death of the deceased to his brother. I have taken these facts from my Judge's Notebook.

Mr, Krupavaram submitted that it was a serious case, deserving of a heavy sentence.

9. I am informed that the taped record of the trial and my judgment on sentence has unfortunately been destroyed. Hence my attempted reconstruction of the record.

10. To the best of my recollection I stated in my judgment, delivered ex tempore, that I took a serious view of the case. I said that there were far too many cases of beating a wife to death, and that I had always taken a serious view of such conduct. I think that I referred to the injuries listed at the foot of page 2 of the post-mortem report, and that I said there was no excuse for conduct such as this. I think I also said that although the Accused had not received a heavy sentence for the assault in 1974, this showed to some extent that he was a person of vicious tendencies.

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I further stated that whilst I took into account the various matters urged by Mr. Pupuma in mitigation, in particular that he had "been in custody awaiting trial for nearly six months, I felt that I had to impose a heavy sentence in order to mark the Court's disapproval of this type of conduct.

11. I draw attention to the fact that in his Notice of Appeal the Accused states that he has 2 children. This is contrary to my notes of the address in mitigation, in which it was said that he had one child

The other matters raised in the Notice of Appeal, so far indeed as they are relevant, were not mentioned in the address in mitigation.

C. J. M. NATHAN

CHIEF JUSTICE.

High Court of Swaziland, Mbabane.

21st April, 1981.