

IN THE HIGH COURT OF SWAZILAND

In the matter of: CRI. T. NO. S.28/83

THE QUEEN

vs

PHENEAS MDUJWA SHIBA

CORAM: B. DUNN, A.J.

FOR CRWON: MR. M. SIBANDZE

FOR DEFENCE: MR. V.T. SIMELANE

JUDGMENT ON EXTENUATING CIRCUMSTANCES

(Delivered on 26th July, 1983)

Dunn, A.J.;

You were found guilty of the murder of Maguduva Phillip Malindzisa on the 30th July, 1982 at Simunye.

Upon the conviction I requested Mr. Simelane to address the Court on the existence or otherwise of extenuating circumstances. It is to be borne in mind that the onus of proving the existence of extenuating circumstances rests on the accused.

Mr. Simelane referred to the fact that you are a young man aged 25 years. He has also referred to the circumstances leading to the stabbing of the deceased with particular reference to the fact that your girlfriend was being dragged away by the deceased and his companion and that you must subjectively have felt very jealous as a result of the deceased's conduct. Mr. Simelane has referred ;the Court to HUNT SOUTH AFRICAN CRIMINAL LAW AND PROCEDURE VOLL. 2 358 - 366 where the question of extenuating circumstances is dealt with. It is clear that the Court should here consider the cumulative effect of factors which may go towards reducing the moral blameworthiness of the accused.

Taking into account the age of the accused and the circumstances leading to the stabbing of the deceased I find

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that extenuating circumstances exist.

B. DUNN.

ACTING JUDGE.