

IN THE COURT OF APPEAL OF THE REPUBLIC OF BOTSWANA

Criminal Appeal No. 12 of 1982

In the matter between:

KAMOGELO RANTAUNG	1st Appellant
OITOGETSE RANTAUNG	2nd Appellant
and	
THE STATE	Respondent

CORAM: MAISELS, P
AGUDA, JA
KENTRIDGE, JA

Mr. M. Kades for the Appellants
Mr. S. A. Afful for the State

JUDGMENT

KENTRIDGE, JA

This case like the previous one has the tragic element of a killing within the family. The two appellants, two young men, were found guilty of the murder of their grandmother, having kicked her to death one night. It appeared that the brothers had had some sort of re-union on that evening, which resulted in some consumption of liquor. On the evidence they were creating a disturbance and this lady, their grandmother, got out of bed to go outside to see what the cause of the disturbance was.

She apparently had an overcoat loosely thrown round her shoulders. This overcoat one can assume did not cover her fully and when the first appellant saw her in a naked or partially naked state, by reason of the beliefs which he said he had, he took her for a witch. According to his evidence, (and there was other evidence too), witches are believed to go about at night, in the form of elderly naked women. Be that as it may, his reaction was the astonishing one of knocking her down. When she was on the ground he proceeded to kick her about her head. His younger brother (the second appellant) joined in and the injuries they caused her led to her death.

Although the appellants were rightly found guilty of murder, the learned Judge took into account as extenuating circumstances their youth, their consumption of liquor, and to some extent, their belief in witchcraft.

In this Court Mr. Kades, who is appearing for the appellants, had only one submission. He submitted that the act of the old lady in exposing her naked body to the appellants constituted provocation within the terms of section 211 of the Penal Code. He submitted that whereas under subsection (3) of that section, an unlawful act cannot be provocation for an assault, in this case her act of exposure was unlawful. He was unable to point to any law which would render the conduct of the deceased an unlawful act. In any event, section 211 does not provide

that every unlawful act constitutes a provocation. It seems to me to be impossible to find that ^{the} / action of the deceased in coming out of her house to investigate the disturbances, whether naked or not, can be regarded as provocation such as would reduce the crime to manslaughter.

Mr. Kades, who realized that his case was a difficult one, asked us to take into account the effect that the appearance of the deceased in the state of nakedness or partial nakedness late at night would have had on these particular appellants. Giving full weight to this, there is still no ground for holding that the conduct of the deceased amounted to provocation. I see no reason for differing from the trial Court on this issue.

The only other matter which was argued by Mr. Kades at the request of the Court, was whether there should have been greater differentiation in the sentence imposed on the second appellant. Because of his youth and because his conviction and sentence have cut short a promising educational career, I have given considerable thought to the possibility of reducing the sentence on the second appellant. But the learned Judge in giving a sentence of only 8 years for murder, clearly took this consideration into account. Moreover, as Mr. Afful submitted on behalf of the State, it is not for us to interfere with the sentence given in the Court below unless

it is so high that justice calls out for a reduction.
That is not the case. The sentences imposed of 10 years
and 8 years were reasonable in the circumstances.
Consequently, in my opinion, the appeal against
conviction and sentence must be dismissed.



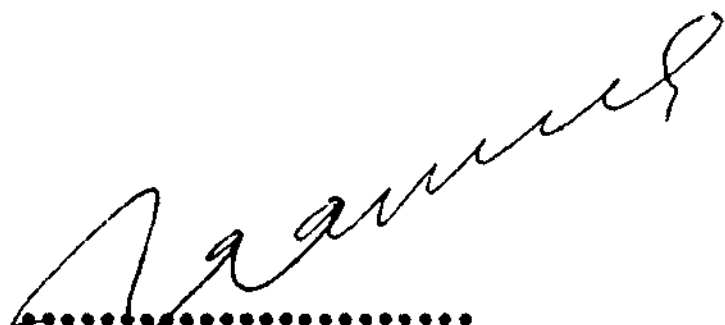
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S. V. KENTRIDGE
Judge of Appeal

I agree:



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I. A. MAISELS
Judge President

I agree:



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T. A. ACUDA
Judge of Appeal

LOBATSE
7th December, 1982