

IN THE COURT OF APPEAL OF THE  
REPUBLIC OF BOTSWANA

Criminal Appeal No. 13 of 1982

In the matter between:

BONTSHETSE GABEGO

Appellant

and

THE STATE

Respondent

CORAM: MAISELS, P  
O'BRIEN QUINN, CJ  
DENDY YOUNG, J.A.

The Appellant in person  
Mr. Z. Makhwade for the State

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JUDGMENT  
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MAISELS, P

The appellant was convicted in the High Court of the murder of one MMOPIEMANG KEIPOLOKE.

The learned trial judge found that there were extenuating circumstances and sentenced the appellant to 8 years' imprisonment. The appellant's appeal to this Court is not against the conviction but solely against the sentence. At the conclusion of the arguments the appeal was dismissed, it being intimated that reasons for the dismissal would be given later. These now follow. That the appellant was correctly found guilty of murder admits of no doubt. He caused the death

of the deceased by stabbing him with a knife. The evidence plainly established that he did so because of a relationship between the deceased and a woman named CHIKA, with whom the appellant was in love and with whom the appellant had had an 'affaire' for some six years. In the course of an unchallenged statement made by the appellant to a Magistrate he stated inter alia: "I want to tell you that I have killed a person. I killed him by stabbing him with a knife. I killed him because of a girl."

A defence put up by the appellant at his trial that he acted in self-defence in killing the deceased was correctly <sup>rejected</sup> / in the court a quo:

In sentencing the appellant the learned trial judge said -

" You have been convicted of murder contrary to section 207 of the Penal Code. It is one of the most serious offences on the statute book and carries with it a mandatory sentence of death unless extenuating circumstances can be found. In your case extenuating circumstances do exist. You are a young man of nineteen, still immature, and at the time of the offence you were completely infatuated with the woman, Chika. You had had a long lasting relationship with her, but it is quite clear from her own evidence that she thought nothing of having three lovers at the same time. It may be that you were able to accept this but when you learned, as I'm sure you did, despite your denial, that she was to marry the deceased, your jealousy had no bounds.

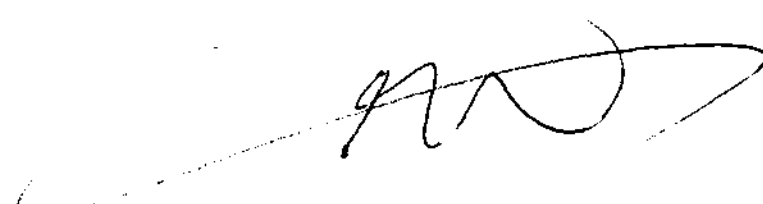
You decided to tackle the deceased and in a jealous rage inflamed by alcoholic drink you took out your knife and stabbed him to death. Your youth, your immaturity and the jealousy you suffered as a result of the conduct of an older woman who, I may say, should have known better, amount, in my view, to extenuating circumstances and therefore sentence is at large.

In sentencing you I take into account your youth, your emotional immaturity, the emotions you undoubtedly felt upon learning that you were to lose the woman you loved, and your previous good character. However, the fact remains that you took the life of a fellow being. Were it not for your age the sentence I am about to impose would necessarily be much longer. As it is I can exercise a degree of leniency. The sentence I pass is one of 8 years' imprisonment to commence from the date of your arrest namely, 20th July, 1981."

I am unable to fault any of this reasoning. If there is to be any criticism of the judgment in my opinion it can only be said that perhaps it was on the side of leniency. In my judgment therefore, there was no substance in the appeal and it was consequently dismissed.

I. A. MAISELS  
President of the Court of Appeal

I agree:



J. A. O'BRIEN QUINN  
Chief Justice

I agree:

J. R. DENDY YOUNG  
Judge of Appeal

LOBATSE

6th December, 1982