

IN THE COURT OF APPEAL OF THE
REPUBLIC OF BOTSWANA

Criminal Appeal No. 21 of 1982

In the matter between:

JOHN TLHARESAKGOSI MOTHAI Appellant

and

THE STATE Respondent

CORAM: MAISELS, P
O'BRIEN QUINN, CJ
DENDY YOUNG, JA

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

JUDGMENT

O'BRIEN QUINN, CJ

The appellant was convicted of murder and sentenced to 12 years' imprisonment by Hannah J on 1st June, 1982.

He now appeals against that sentence, leave to appeal out of time against sentence having been granted on 7th September, 1982. In argument the appellant contended that the sentence was too severe, that he had repented of what he had done and that as he was the only bread-winner of the family his younger

sisters would be unable to continue with their schooling.

Counsel for the State argued that the sentence imposed could not be said to be unreasonable in the circumstances of the case as the only reasons for the stabbing of the deceased with a screw-driver were ostensibly because the deceased had, earlier in the day, consumed the appellant's beer without permission and that the deceased had had an altercation with a girl in whom the appellant had taken an interest. It was also argued that, in view of the senselessness of the killing, it was necessary that the Court below should pass a sentence that would bring to the appellant a full realization that violence such as this should not be lightly resorted to as well as bringing it home to the community at large.

There is no doubt in my mind that the learned trial judge did not misdirect himself on sentence. He took full account of the age of the appellant, which was 24, and of his previous good character. He also said that he did not think that the appellant's action was premeditated, nor was he convinced that the appellant intended to kill the deceased, and held that factors such as those, when taken together, constituted extenuating circumstances.

The learned trial judge went on to say that violent reactions to relatively minor insults and incidents unfortunately occurs far too frequently at beer parties but that, in the case of the appellant, there was an element of retribution for an insult suffered in the action of stabbing the deceased. He said that the appellant's action in stabbing the deceased in the back was brutal and cowardly.

I can see no reason to interfere with the discretion exercised by the learned trial judge and no reasons have been advanced as to why the sentence should be reduced.

Van Winsen A.J.A. in S v Fazzie and Others

1964 (4) S.A. 673 at page 684 said:-

"It is trite law that the determination of a sentence in a criminal matter is "pre-eminently a matter for the discretion of the trial Court." In the exercise of this function the trial Judge has a wide discretion in deciding which factors - I here refer to matters of fact and not of law - he should in his opinion allow to influence him in determining the measure of the punishment. See R v S 1958 (3) S.A. 102 (A.D.) at page T06 and

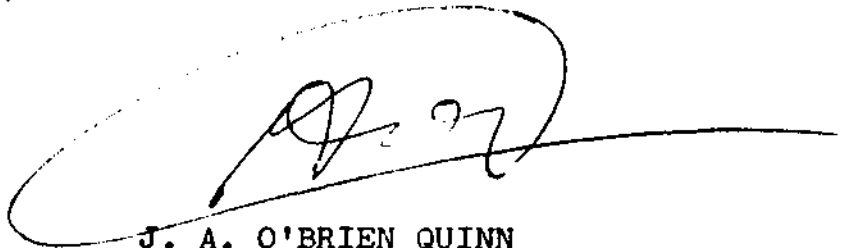
"This Court will not readily differ from the Court a quo in its assessment either of the factors to be had regard to or as to the value to be attached to them." and "Where, however, the dictates of justice are such as clearly to make it appear to this Court

that the trial Court ought to have had regard to certain factors and that it failed to do so, or that it ought to have assessed the value of these factors differently from what it did, then such action by the trial Court will be regarded as a misdirection on its part enabling this Court to consider the sentence afresh."

These quotations set out clearly the approach which an appeal Court should take on the question of sentence and they have been followed in S v Pillay 1977 (4) S.A.L.R. 531 (A.D.)


I consider that the decision of the learned trial judge in the instant case was not open to criticism on any of these grounds and I., accordingly, dismiss the appeal against sentence.

GIVEN at the Court of Appeal, Lobatse, this 6th day of December, 1982.



J. A. O'BRIEN QUINN
CHIEF JUSTICE

I concur:



I. A. MAISELS
JUDGE PRESIDENT

I concur:



J. R. DENDY YOUNG
JUDGE OF APPEAL