

IN THE COURT OF APPEAL OF

THE REPUBLIC OF BOTSWANA

29  
Criminal Appeal No. 39/83

In the matter of:

JOSEPH BOIKANYO THAKE      Appellant

vs.

THE STATE

Mr. Makhwade for the State  
Appellant in person

Coram: Mr. Justice Maisels J.P.  
          Mr. Justice Aguda J.A.  
          Mr. Justice Amissah J.A.

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J U D G M E N T

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MAISELS, J.P.

The appellant, who was charged with murder, tendered a plea of guilty to manslaughter and this plea was accepted by the State. After evidence was given by the appellant and after an address in mitigation had been made by the attorney who appeared on his behalf, the learned Chief Justice sentenced the appellant on his plea of guilty to manslaughter to 10 years imprisonment. The learned Chief Justice pointed out that the maximum penalty which could be imposed for an offence of that nature was life imprisonment. On the facts placed before him the learned Chief Justice was perfectly entitled to impose the sentence he did. However the appellant has placed before us certain factors which apparently were not put before the Trial Court and

which Counsel for the State has fairly stated should have been. Unfortunately this was not done. In view of what was placed before us, we are of the view that the learned Chief Justice would not have imposed the sentence that he did. This is not a case where the learned Chief Justice in any way misdirected himself but it is a case where facts have been placed before this court which justify it in agreeing to substitute a sentence for that imposed in the Court a quo. The appellant is a young man, he is a man of education and it is quite clear to us that the stabbing which he inflicted upon the deceased was not pre-meditated and was really the consequence of a drunken brawl. The appellant demonstrated to us the manner in which he was held by the deceased before he stabbed the deceased and it seems to us that there are factors of mitigation which justify a reduction of the sentence imposed by the learned Chief Justice. We wish to emphasise that we are not interfering with the sentence imposed by the learned Chief Justice on the grounds of any misdirection on his part but are doing so on the grounds set out above. Justice will be served in this case if portion of the sentence imposed by the learned Chief Justice were suspended. In our view the sentence should be the following:

"The appellant is sentenced to 10 years imprisonment, back dated to the date of his arrest, of which four years will be suspended for a period of three years, on the condition that during the

period of suspension he is not convicted of any offence involving violence and in respect of which he is sentenced to a term of imprisonment without the option of a fine.

*I. A. Maisels*

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I. A. MAISELS, J.P.

*T. A. Aguda*  
*T. A. Aguda*

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T. A. AGUDA J.A.

*A. N. E. Amisah*

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A. N. E. AMISSAH J.A.

I agree

I agree