

IN THE COURT OF APPEAL FOR BOTSWANA

Criminal Appeal No. 33 of 1983

In the matter between:

SOBE DITEKO MMOLOTSI

Appellant

and

THE STATE

Appellant in person  
Mr. R. J. Chakalisa for the State

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JUDGMENT

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CORAM:

MAISELS, P  
AMISSAH, JA  
HANNAH, JA

HANNAH, JA

This was originally an appeal against conviction of murder as well as sentence of 12 years' imprisonment. However, by an amended Notice of Appeal the appellant limited his appeal to sentence only and he has today confirmed that that is his intention.

The offence was committed on the evening of 19th October 1982 when the appellant shot his elder brother in the back with a shot-gun causing fatal wounds. The two men had shared the favours of the same girl-friend and it is

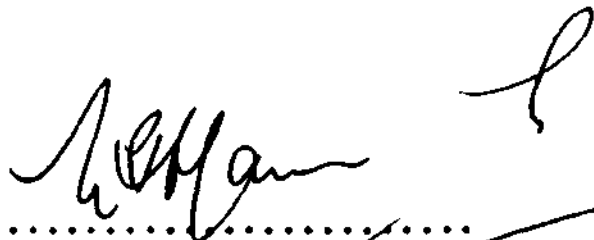
clear that it was jealousy arising from this relationship which led to the initial quarrel between the two men and to the action which the appellant ultimately took.

In his Notice of Appeal the appellant asks for leniency. He points to the fact that he is a cripple having only one arm and that he is only 24 years of age. Before this Court he has again referred to the state of his health.

In passing sentence, the learned Chief Justice took into account that the appellant is crippled. Indeed it seems to me that this was one of the factors which saved the appellant from sentence of death. It is also clear from the judgment that the learned Chief Justice took into account the youthfulness of the appellant and that he was the sole breadwinner.

In my opinion, this was a very serious offence. As was pointed out by the learned Chief Justice there was an element of premeditation in the sense that the appellant told the girl-friend to move before firing the fatal shot. In my opinion, the sentence of 12 years was well merited.

It has been pointed out by State Counsel that the sentence was ordered to be brought into effect on the 13th May 1983 whereas the appellant had been arrested on the 20th October 1982 and was in custody since that date. Save that I would amend the sentence to give effect to that fact, I would dismiss the appeal.

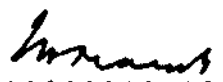
  
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N. R. HANNAH  
Judge of Appeal

MAISELS, JP:

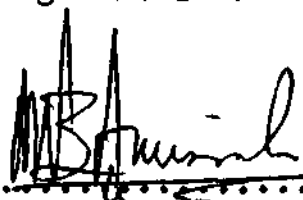
The order of the Court is that the sentence imposed is altered to read as follows:

Twelve (12) years' imprisonment  
to date from 20th October, 1982.

Save for the foregoing, the appeal is dismissed.

  
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I. A. MAISELS  
Judge President

I also agree:  
LOBATSE  
20th July, 1983

  
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A. N. E. Amisshah  
Judge of Appeal