

IN THE COURT OF APPEAL OF BOTSWANA

Criminal Appeal No. 11 of 1984

Criminal Trial No. 7 of 1984

In the matter of:

LESENYO KGERESI

Appellant

vs.

THE STATE

Mr. J. M. Bogatsu for the Appellant

Mrs. L. I. Dambe for the State

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J U D G M E N T

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CORAM: I. A. Maisels, JP  
L. de van Winsen, JA  
I. Isaacs, AJA

MAISELS, JP:

The appellant was indicted in the High Court on a charge of murdering a child SAMUEL MODISE, three years of age. He pleaded not guilty but was found guilty and no extenuating circumstances having been found he was sentenced to death.

The appeal to this Court was against conviction and sentence. Counsel for the appellant found himself unable to make any submissions on behalf of the appellant with regard to the correctness of the conviction and confined his arguments to endeavouring to show that there were extenuating circumstances which would justify the setting aside of the

death sentence. In these circumstances, the Court took the somewhat unusual step of permitting the appellant himself to address the Court.

At the conclusion of the argument the Court dismissed the appeal intimating that its reasons for doing so would be given later. These are the reasons.

I do not propose reciting the quite appalling facts of his murder.

They are fully set out in the admirably clear and comprehensive judgment of Hannah ACJ. These facts demonstrate beyond any doubt, let alone reasonable doubt, that the appellant, a witch doctor, planned to and did commit the murder of an innocent child in a manner so brutal as to beggar description. He did so, the evidence clearly shows, in order to obtain portions of the child's body for use as medicine so as to increase his powers as a witch doctor. On these facts Counsel for the appellant was with the quite impossible task of endeavouring to persuade this Court that the present was not a case where the appellant was guilty, he ought not to have received the penalty. As for the appellant's own statement that it was simply a repetition of what he stated in his defence, it was of no substance. In short, so far as the grounds for interfering with the judgment of the trial judge are concerned, there are none.

I think it right to say that I am in complete agreement with it.

As stated above, the appeal was consequently dismissed.

GIVEN at the Court of Appeal, Lobatse, this 23rd day of May, 1984.

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I. A. MAISELS  
Judge President

I agree

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L. DE VAN WINSEN  
Judge of Appeal

I agree

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I. ISAACS  
Acting Judge of Appeal