

IN THE COURT OF APPEAL OF BOTSWANA

Court of Appeal CA 29 of 1984
High Court Trial No. 6 of 1983

In the matter of:

SNICKSON MOGOROSI

Appellant

vs.

THE STATE

Appellant in person
Mr. Z. Makwade for the State

CORAM: O'BRIEN QUINN CJ.
BARON JA.
AGUDA JA.

J U D G M E N T

O'BRIEN QUINN, CJ.

The appellant has appealed against the sentence of 5 years imprisonment passed on him by Corduff, J. sitting in the High Court at Francistown on 28th February 1984, on a conviction of manslaughter.

The appellant was originally charged with the murder of one Margaret Kenosi on or about the 13th September 1983 and, after trial, the learned trial judge was satisfied that the appellant did kick the deceased at least once, that the deceased's stomach was bruised and that the kick was directed at her abdomen. He was also satisfied that the appellant struck the deceased with clenched fists and he rejected the appellant's evidence that he had been chastising and disciplining the deceased in a cool and calculated manner.

The deceased sustained a three-inch laceration of the liver along the line of the common bile which led to haemorrhage which in turn led

to shock resulting in death.

The learned trial judge said in his judgment that, from the evidence of Doctor Sayana, he was satisfied that considerable force would be required to lacerate the deceased's liver in the way described in the post-mortem report and that:

"..... the force involved was considerable and far and away greater than would be used in administering lawful chastisement."

He went on to say that an intention to do grievous harm could be inferred from the nature of the assault and the resultant injury and that the prosecution had established the necessary mens rea for murder. However, he held that it must be accepted from the evidence as a whole that the appellant was provoked within the meaning of the term given in section 211 of the Penal Code and that his response to the provocation bore a reasonable relationship to the provocation.

He, therefore, found the appellant guilty of manslaughter and not of murder and, after considering that the appellant had seemingly a disposition towards violence but that he was not justified in behaving in an unrestrained way in reaction to insults, sentenced him to 5 years imprisonment ordered to commence from the date of his arrest, namely 11th September 1983.

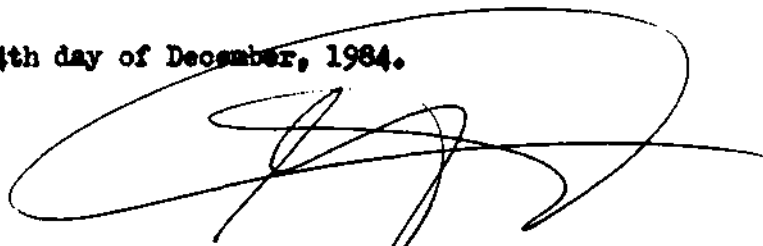
On appeal, the appellant argued that the sentence was severe in view of the fact that he was family man who had nobody to look after or pay the school fees of his minor children and the 6 children of the deceased whom he had also, now, to look after. He also urged the Court to consider that he had not intended to kill the deceased, that he was remorseful for what he had done and that the Court should consider that he was now 57 years of age. He pointed out that he was the sole bread-winner in the household and that with the drought his presence

was needed to provide for the family.

Careful consideration was given to his arguments but, in view of the gravity of the offence, and the fact that the learned trial judge had been, in our view, most lenient in passing a sentence of 5 years imprisonment only, and in having given the appellant the benefit of the doubt on the question of provocation, I decided not to call upon State Counsel to reply and dismissed the appeal against sentence.

The order of dismissal was made yesterday in open Court in the presence of the appellant and its purport explained to him.

Written at Lobatse this 4th day of December, 1984.



J. A. O'BRIEN QUINN CJ.

I agree

L. S. BARON JA.

I agree



T. A. AGUDA JA.