

IN THE COURT OF APPEAL OF BOTSWANA

Criminal Appeal No. 50 of 1986

In the matter between:

SCOTCH GEORGE BABEILE

Appellant

versus

THE STATE

Appellant in person  
Mr. S. A. Afful for the State

CORAM: T. A. AGUDA, J.A.  
L. VAN WINSEN, J.A.  
G. BIZOS, J.A.

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J U D G M E N T

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AGUDA J.A.:

When this case came before this Court on December 4, 1986, the appeal against conviction was dismissed whilst that against sentence succeeded to the extent that the sentence of fifteen years imprisonment imposed by the trial judge was reduced to that of ten years to commence from June 30, 1985, the day the appellant was apprehended and kept continuously in custody until his conviction and sentence. I then stated that I shall give reasons later, and these I now give.

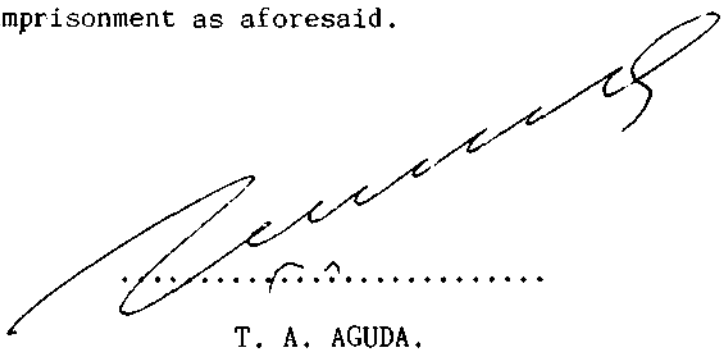
When the appellant appeared before Muhammad, Ag. J., on November 19, 1985 on a charge of the murder of one Krools Dekoter on June 29, 1985, he pleaded not guilty. However after a trial in which fourteen witnesses gave evidence for the State and the appellant gave evidence in his own defence, he was found guilty and convicted accordingly. The court a quo having found that there were extenuating circumstances, sentenced the appellant to fifteen years imprisonment. It is against both the conviction and the sentence that he filed the appeal to this court.

The facts of this case are very simple. On June 29, 1985, at a place called Kisane Borehole there was a beer drinking party at the yard of one Kelehilwe. The party started in the mid-morning and ended at about 6 p.m. During the drinking party there was some altercation between the appellant and one Phandlane, in which the deceased intervened and insulted the appellant. After this the scene of activities moved to the kraal. When the appellant arrived at the kraal, the deceased who apparently had got there before him, stood up and hit him on the ribs as a result of which the appellant fell down. The deceased who was of a bigger build and apparently healthier than the appellant then sat on top of him and punched him on the face. The deceased later stood up and kicked the appellant on the face. The appellant suffered severe injuries to his face and to one eye. One of the persons present then got hold of the deceased and asked the appellant to go away as otherwise the deceased would kill him. The appellant then went away whilst the deceased and some others remained. About ten minutes later, it would appear, the appellant came back and administered injuries on the deceased which caused his death. These were a fracture of the skull with laceration of the brain and a stab wound on the back of the right chest. Although the appellant denied being the person who inflicted these wounds on the deceased, the court a quo, disbelieved him in this regard. It is, however, quite clear on the records that it cannot be held that the court erred in so doing. I therefore have no hesitation in upholding the conviction of the appellant, and in therefore dismissing his appeal against conviction.

Having convicted the appellant of murder, the trial judge rightly, upon the facts found that there were extenuating circumstances which precluded the imposition of the death sentence. He then imposed a sentence of fifteen years imprisonment as earlier stated. Mr. Afful

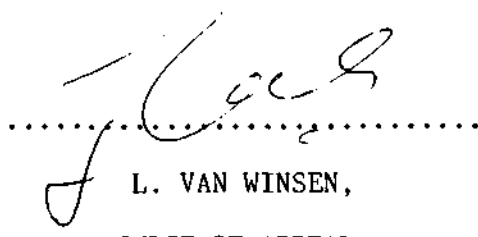
arguing the appeal on behalf of the State, rightly conceded that there were certain matters the learned trial judge failed to advert his mind to in the determination of the punishment appropriate to the offence. These include the fact that the deceased was much bigger man than the appellant, the fact that the deceased had severely beaten and brutally injured the appellant only a short while before the incident; the fact that the appellant was to some extent a cripple who found difficulty in walking; and the fact that the appellant had no previous record of any offence involving violence to the person whatsoever. The trial judge having failed to give sufficient consideration to these matters, the question of appropriate sentence then became an open one for decision by this court.

It is for all above reasons that I dismissed the appeal against conviction; allowed the appeal against sentence; and imposed a sentence of ten years imprisonment as aforesaid.



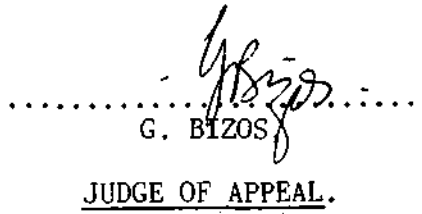
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 T. A. AGUDA.  
JUDGE OF APPEAL.

I agree



.....  
 L. VAN WINSEN,  
JUDGE OF APPEAL.

I agree



.....  
 G. BIZOS  
JUDGE OF APPEAL.