

IN THE HIGH COURT OF BOTSWANA

Criminal Appeal No. 19 of 1986

In the matter between:

KELEMOGILE TINYE

Appellant

versus

THE STATE

Respondent

Appellant in person

Mr. S. A. Afful for the Respondent

J U D G M E N T

CORAM: I. A. MAISELS, JP.
L. DE VAN WINDEN, J.A.
B. A. DOYLE, J.A.

DOYLE, J.A.:

This case arose from incidents at a drinking party on 24th August, 1985. The evidence was ^ocluded by the fact that almost all the witnesses were under the influence of drink.

The trial judge found the facts as follows -


Attending the party were amongst others Appellant, Deceased and a man Phepeng. At some stage in the party deceased had tried to stab Appellant's sister and had ~~stabbed~~ the Appellant though not seriously.


Later after further drinking Deceased behaved in a general threatening way to others. Appellant and Phepeng decided to teach Deceased a lesson for his previous behaviour. They started to beat Appellant with their fists and a scuffle ensued. During this the Appellant produced a knife ^{and} in the heat of the moment stabbed Deceased who subsequently died of the wound.

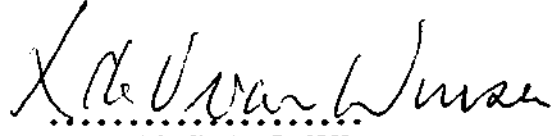
Appellant was found guilty of manslaughter and sentenced to seven years imprisonment. In doing so the learned Judge expressly took into account the previous attack on Appellant, the fact that Appellant was intoxicated and that the blow was struck in the heat of the moment. He stated that the use of the knife was very serious and that he was imposing a less severe sentence by reason of Deceased's behaviour.

There is nothing in this sentence which would enable this Court to interfere. The Appeal is dismissed.

GIVEN AT THE COURT OF APPEAL, LOBATSE, this 29th day of June, 1987.


.....
B. A. DOYLE
JUDGE OF APPEAL.

I agree, 
.....
I. A. MAISELS
JUDGE PRESIDENT.

I agree, 
.....
L. DE VAN WINSEN
JUDGE OF APPEAL.