

IN THE COURT OF APPEAL OF BOTSWANA HELD AT LOBATSE

COURT OF APPEAL CRIMINAL APPEAL NO. 1/89

HIGH COURT CRIMINAL TRIAL NO. 34/88

In the matter between:

PATENAKA CHIBIDU - Appellant

vs.

THE STATE - Respondent

Appellant In Person

Mr. S.A. Afful for the State

J U D G M E N T

CORAM: AMISSAH, JP

DOYLE, JA

SCHREINER, JA

AMISSAH, JP

This is an appeal against sentence only.

The appellant was charged with the murder of one Tuelo Segwagwa. There was no dispute that the deceased had died as a result of stab wounds inflicted by the appellant. The deceased died within an hour of the infliction of the stab wounds. The stabbing occurred after a struggle between the appellant and the deceased for a radio set which the deceased was holding. The appellant then took a packet of cigarettes from the deceased and ran away with it. The deceased chased after the appellant. A fight ensued between them during which the deceased threw stones at the appellant one of which caused injury to the appellant's head and he fell down. It was after this that the appellant stabbed the deceased, not once, but twice. The appellant did this while the deceased was running away.

The learned Chief Justice who tried the case, in a careful judgment, found the appellant not guilty of murder, but guilty of the lesser offence of manslaughter. In his judgment, and we agree with him, the throwing of stones by the deceased at the appellant was an act of provocation which reduced the act of homicide from murder to manslaughter. He thereafter sentenced the appellant to 7 years imprisonment, the sentence to run from the date of the appellant's arrest.

The appellant has before us argued that that sentence be reduced. Among the reasons he has put forward are that the long prison term imposed will cause a disaster concerning his life and his family. Furthermore, he would like this Court to consider the fact that he was a first offender. The learned Chief Justice gave consideration to the relevant issues in determining the sentence. The offence committed by the appellant was a very grave offence. But the Chief Justice also expressly referred to the fact that the appellant was a first offender who had expressed remorse at the first opportunity when he gave statement to the Police.

The sentence was within the jurisdiction of the Chief Justice to give. We see no reason why we should disturb it. We, therefore, dismiss the appeal.

.....
A.N.E. AMISSAH
JUDGE PRESIDENT

I AGREE
B.A. DOYLE
JUDGE OF APPEAL

I AGREE
W.H.R. SCHREINER
JUDGE OF APPEAL

26th JUNE, 1989