

IN THE COURT OF APPEAL OF THE
REPUBLIC OF BOTSWANA

Criminal Appeal No. 14 of 1989
High Court Crim. Trial No. 29 of 1987

In the matter of:

GALENTEBALE GABAGAISANE

Appellant

vs

THE STATE

Respondent

Appellant in person

Mr. O.G.B. Marata for the Respondent

J U D G M E N T

Coram: T. A. AGUDA, JA.
G. BIZOS, JA.
SCHREINER, JA.

SCHREINER, JA.:

The appellant in this matter was the second accused in a trial for manslaughter in respect of an offence committed on the 7th of February, 1987.

The charge was one of manslaughter and arose out of certain events which occurred at a beer drinking party. The appellant and the deceased became involved in a quarrel which seems to have arisen as a result of the deceased criticising his, (the deceased's) wife, for bringing a small child to a party.

The deceased was a younger and a stronger man than the appellant. The quarrel developed into a fight with fists and the first accused who is not before this Court then intervened. There seems to have been a stick used by the appellant but that does not seem to have played an important part in the death of

the deceased. The deceased was knocked to the ground and kicked by the first accused and the appellant. That caused his spleen to be broken and his death.

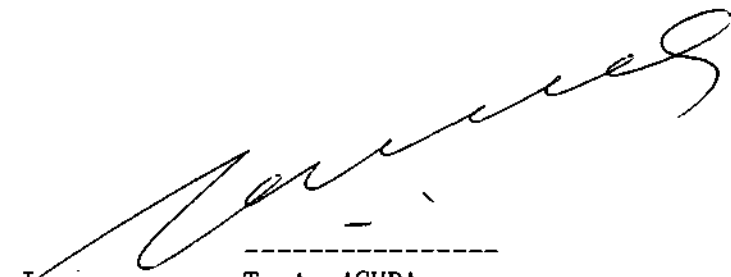
The first accused and the appellant pleaded guilty at the trial to manslaughter and the learned Judge sentenced the first accused to 18 months' imprisonment and the appellant to 6 years. He considered a number of mitigating factors. Both accused were drunk. The appellant is a middle aged person. He is a married man with one child and he is apparently showed remorse for what he did.

In sentencing the first accused to 18 months' imprisonment the learned Judge took into account the fact that he got involved by reason of his trying to intervene to stop the fight. Be that as it may, both the accused kicked the deceased when he was on the ground.

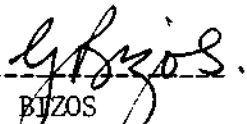
This Court is of the view that the difference between the two sentences is too great. The sentence of 18 months for the first accused may well have been justified. We consider that a proper difference in the sentences of the two accused should result in the sentence of 3 years and not 6 years which the learned Judge imposed. The appeal on sentence is upheld and the sentence is altered from 6 years to 3 years to commence from the date of his conviction.



W.H.R. SCHREINER
Judge of Appeal



I agree T. A. AGUDA
Judge of Appeal



I agree G. BIZOS
Judge of Appeal

GIVEN AT LOBATSE THIS 3RD DAY OF JULY, 1989.