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IN THE COURT OF APPEAL OF THE REPUBLIC  
OF BOTSWANA

Criminal Appeal No. 9 of 1990

In the matter between:

MESKIA ACE KAUHANDA

Appellant

vs

THE STATE

Respondent

Appellant in Person  
Mr. S. Afful for the State

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J U D G M E N T

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Coram: A. N. E. Amisah, JP.  
B. A. Doyle, JA.  
W. H. R. Schreiner, JA.

DOYLE, JA,

The Appellant pleaded guilty to manslaughter and was sentenced to four years imprisonment to date from his arrest. He now appeals against sentence. Counsel for the Appellant was unable to submit any argument in favour of the appeal.

The facts briefly were that the appellant and the deceased woman, Phoinyana Phofu, were tenants in the same yard. On 7th August 1989 the appellant arrived home and sent a friend, Ofisi, to fetch some eggs from a hen run in the yard. The run belonged to a woman, Mmalerato, but appellant's hens used

sometimes to lay eggs there. Phoinyana who suffered from pulmonary tuberculosis was basking in the sun when Ofisi came. Phoinyana then started accusing appellant of stealing eggs belonging to Mmalerato. Appellant became angry and protested at Phoinyana making such an allegation. Phoinyana persisted with similar allegations and told appellant that he could beat her if he wished. He and Phoinyana exchanged insults. Phoinyana then got up and went into her house where she lay down on a blanket. She continued her allegations from there. Appellant came to the door, shook it and told Phoinyana to stop. She did not. Appellant then went into the house and kicked her once in the chest. He then left. Later that day Phoinyana died.

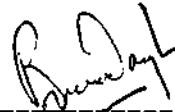
A post-mortem examination showed that the 2nd to the 5th ribs were fractured and that death was due to pulmonary tuberculosis. The pathologist gave evidence and said that a blow with moderate force could cause the fractures. He said the blow precipitated the death by impeding the supply of oxygen needed by Phoinyana. Without the blow Phoinyana would have lived at least two months more.

The taking of a life is of course always a serious matter. Though it is likely that appellant knew that Phoinyana was ill, there is no evidence that he knew that she was really in a sense a dying woman. Ordinarily a blow such as he delivered would not have caused death. There was an element of bad luck from the point of view of the Appellant. He had been goarded considerably and in a fit of temper, he kicked

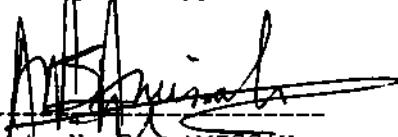
her. Appellant had a number of mostly minor convictions for offence involving violence to the person. The most recent was a fine in 1986 of P20 for assault occasioning actual bodily harm.

Taking all the circumstances into account we consider that the sentence does induce a sense of shock and that it is unreasonably harsh. We therefore allow the appeal and reduce the sentence to a period of two years imprisonment from date of arrest.

DELIVERED IN OPEN COURT IN LOBATSE <sup>4<sup>th</sup></sup> DAY OF NOVEMBER, 1990

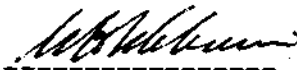


B. A. DOYLE  
Judge of Appeal



A. N. E. AMISSAH  
Judge of Appeal

I agree:



W. H. SCHREINER  
Judge of Appeal

I agree: