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IN THE COURT OF APPEAL FOR THE REPUBLIC OF BOTSWANA  
HELD AT LOBATSE

Criminal Appeal No. 9/93  
(High Court Criminal Case No. (F)249/92)

In the matter between:

NKULUMANE DEMA Appellant

and

THE STATE Respondent

Mr. S.T. Pilane for the Appellant  
Mr. I.E.S. Motsamai for the Respondent

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**J U D G M E N T**

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Coram: Aguda J.A.  
Schreiner J.A.  
Puckrin J.A.

SCHREINER J.A.:

The Appellant was charged with, and convicted of, the murder of an old lady, Mrs Mabego Gosenyaphuti, at Makondundu cattle post in the Northern Administrative District on the 9th June 1991. He was sentenced to death. He was also charged with, and convicted of, the theft of P91.99 at the same place and on the same day. He was sentenced to imprisonment for eighteen months.

The facts surrounding the killing are to be gleaned from the confession which was made by the Appellant and the evidence which was given by him in Court.

The Appellant, who at the time of the trial in March 1992 was 27 years old, had been employed by the son-in-law of the deceased to dig stumps out of his field situated at a cattle post at Makondundu, for the sum of P100. The son-in-law lived at

Francistown. The deceased lived at the cattle post. Two weeks before the 9th June, 1992 the Appellant had finished the work, but by that date had not been paid. The daughter of the deceased had visited the cattle post a week before the 9th June and the Appellant pointed out that the work had been completed and asked for payment. It appears that by the 9th June he was very unhappy about the failure to pay his wage, an obligation which rested with the son-in-law of the deceased.

On the 9th June the Appellant, with three companions drank beer at Barolong. They together consumed about ten packets of chibuku Shake-Shake as a result of which the Appellant became drunk. He then went to the cattle post at Makondundu and arrived there still drunk.

The Appellant then says that he talked to the deceased about his money and said that he wanted it. She merely told him that she was not the one who employed him and he "got annoyed" and committed the offence. He says that he strangled her with his hand pressing her neck until "she was finished" i.e. until she no longer struggled. He took the body to his hut after covering her with a blue dust coat.

The Appellant then entered a hut which was, as far as can be judged, at the cattle post and stole P91.99 which was an amount roughly representing the wage which was due to him.

The doctor who carried out a very thorough post mortem operation and who was present when certain photographs were taken of the body of the deceased deposed to seeing a scarf which was tightly double looped around the neck of the deceased and also a

necklace made up of beads and rings the impression of which on the neck of the deceased had left marks on the skin. The evidence of the doctor may give the impression that the death was caused by the tightening of the scarf rather than the mere pressure of the hand of the Appellant. He said that he noticed the scarf only on the head of the deceased. I do not think that this matters.

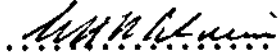
The appeal was argued purely on the basis of sentence and, as the State, rightly in my view, had conceded the existence of extenuating circumstances, there was little to say. This is not a case where, notwithstanding the finding of extenuating circumstances, the extreme penalty should be imposed. The consumption of liquor resulting in a loosening of restraint which would normally prevent the commission of a crime and the apparently genuine grievance concerning his remuneration do, in my view, constitute mitigating factors.

However, the crime was a very brutal one. The deceased was a defenceless very old lady who was at the mercy of the Appellant and he went through with the process of strangling or suffocating her until she ceased to struggle altogether. His conduct deserves a very heavy punishment both to discourage him and others from similar acts and to express the indignation and disgust of society against its brutality. I would therefore impose a sentence of fourteen years imprisonment commencing from the date of his detention, namely, the 19th June 1991.

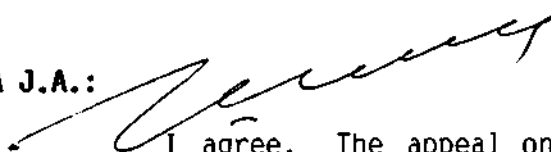
Counsel for the Appellant sought to raise the question of the sentence imposed upon the Appellant in respect of the theft. There was no appeal lodged against this sentence and it will, by now,

have been served. I do not think that the Court can interfere with it, though the ante-dating of the sentence on the murder charge will have the same effect as making the two sentences run concurrently.

Delivered in open court at Lobatse this ..... day of July, 1993.

  
W.H.R. SCHREINER

AGUDA J.A.:



I agree. The appeal on sentence on the charge of murder succeeds and is altered to one of 14 years imprisonment calculated from the 19th June 1991.

PUCKRIN J.A.: I agree.

