

**IN THE COURT OF APPEAL OF BOTSWANA**  
**HELD AT LOBATSE**

**Criminal Appeal No. 38 of 2002**  
**High Court Criminal Trial No. 15 of 2002**

In the matter between:

**SEDUMEDI MANAMELA**

**Appellant**

and

**THE STATE**

**Respondent**

Mr. E. F. Luke II for the Appellant  
Mr. A. C. Mubika for the Respondent

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

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**Coram:** C. Plewman, J.A.:  
Lord R. I. Sutherland, J.A.:  
F. H. Grosskopf, J.A.:

**PLEWMAN, J.A.:**

This appeal arises as a result of the conviction of the appellant and one other by the High Court on 17 September 2002 following a particularly violent and merciless murder. Appellant was the second accused at the trial.

The facts must be briefly recounted. The deceased was one Jacob Mohapi. Appellant and one Mompoti (PW1 at the trial) were herdsmen at Bogwete Cattle Post. They both resided there. Also there resident was one Betty Tlhagwane (PW2 at the trial). Appellant's co-accused Mokenti Bele (accused no.1 at the trial) was an acquaintance who lived at a distant cattle post named Dikeletsane Cattle Post.

On the 16 March 2001, PW1, PW2 and the deceased walked to Dikeletsane borehole for the purpose of purchasing alcoholic beverages (locally referred to as "shake shake").

There they encountered appellant's co-accused. It will be convenient to refer to him as Mokenti. Mompoti bought thirty cartons of alcohol which was carried back to Bogwete borehole. They were joined there by Mokenti and a night of revelry ensued though Mokenti left at some point. On the morning of 17 March deceased arrived at Mompoti's doorstep and he joined the drinking party. All but PW2 were under the influence of alcohol in varying degrees by this time. PW2 was not so affected because she did not drink. At some point appellant joined the revelry and also partook of the intoxicating liquor. A longstanding dispute concerning money, owed by the deceased to appellant, in a relatively small sum, was raked up leading to a quarrel in the course of which deceased insulted appellant – referring disparagingly to his lack of teeth. Tempers flared but Mompoti calmed the pair down and peace was temporarily restored. At about 9 a.m. Mokenti again

arrived – he was searching for donkeys of his which had gone missing. The atmosphere does not seem to have been overfriendly but this notwithstanding, Mokenti was permitted to purchase ten cartons of the liquor on credit. These were added to the supply and the drinking went on. At about 4 p.m., the deceased left for his cattle post, but returned shortly thereafter with an okapi knife. The knife was later taken from him by PW2 – happily at a time before it too could feature in the events. It seems that the deceased again insulted appellant in a vein similar to that already recounted. This led to a fight – a physical assault upon the deceased by the appellant and Mokenti. In the course of this quarrel deceased's arm was cut with a knife and he was kicked and stamped upon by the appellant and Mokenti. He was then dragged out of the yard and was again kicked and stamped upon outside the yard by the appellant and Mokenti. He was at this point unconscious and totally immobile. He seemed to be dead.

He was then carried some forty metres into the bush. Both PW1 and PW2 seem to have assisted. There is good reason to suppose that they in fact played a more active role than either was prepared to admit (though in the end result whether this was so or not does not affect the clear view which can be taken of the event as a whole). PW2 was ordered to fetch a spade and the three men (that is the appellant and Mokenti and PW1) proceeded to dig a shallow grave. At some point the deceased revived sufficiently to mumble a plea that he not be killed. This was

responded to by Mokenti striking the deceased in the face with a spade again rendering him unconscious. Mokenti thereupon cut the deceased on his abdomen and then slit his throat. Deceased body was rolled into the grave which had been prepared and the grave was filled in and the ground levelled. Before leaving the scene the appellant stamped on the grave and uttered words to the effect "guard the grave. If you leave, I will follow you and kill you." The four then dispersed. It was upon evidence establishing these facts with sufficient certainty that the Court a quo convicted appellant and his co-accused, Mokenti of murder with extenuating circumstances (being the state of intoxication of all concerned and the fact that the deceased was largely responsible for the fracas which ensued). Mokenti was sentenced to 20 years imprisonment and appellant to 16 years imprisonment.

Appellant's counsel in essence argued only two points. Firstly it was urged upon us that the appellant's conduct resulted from provocation in the form of the verbal insults directed at the appellant. The court a quo, it was said, gave this aspect of the events insufficient weight. This, in my view, is incorrect. At page 229 of the record, the learned judge in the court a quo said:-

"I accept too, that but for the provocative behaviour of the deceased, in first offering gratuitous insults, then departing to prepare for a fight, before returning armed with a knife, and instigating that fight, there would have been no initial fracas, and the series of nightmare acts which followed would never have commenced. But nothing can excuse the brutal behaviour of the two accused once they had overpowered the deceased and rendered him helpless."


The learned judge thus clearly took into account the verbal provocation and equally clearly put it into proper perspective when considering the events as a whole. I would endorse both his finding and his assessment of the materiality of the provocative insults.

The only other submission of substance made by counsel was the contention that the learned judge misdirected himself in accepting that the accused had acted in common purpose with Mokenti. The basis for this submission was an argument that the various incidents should be treated as separate events. I do not agree. The appellant joined in the fight at an early stage and was active in the assault throughout. Thus, even though it was his co-accused who slit the deceased's throat the appellant was actively involved in the efforts to cause the deceased injuries which he must have known could be fatal and took part in the burying of the deceased. He at no time sought to dissociate himself from what was being done and gave the whole enterprise his blessing by dancing on the grave and uttering the warning (one imagines to PW1 and PW2) as a final affirmation that what had happened carried his blessing throughout. Counsel's submissions cannot, in these circumstances, be accepted.


Finally it was contended that the sentence of 16 years was one of such severity that it should induce in the Court a sense of shock entitling it to interfere. I regret that I do not agree. This was a brutal, senseless killing carried out with no sign of

moderation or decency. It was in fact carried out (as the learned Judge a quo said) in the most callous manner possible. In my view, the appeal against conviction and the sentence must fail. The order that I make is that the appeal is dismissed and the conviction and sentence are confirmed.

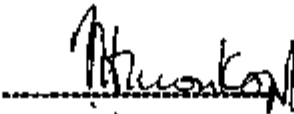
Delivered in open Court at Lobatse this 25<sup>th</sup> day of July 2003.

  
C. PLEWMAN  
Judge of Appeal

I agree

  
LORD R. I. SUTHERLAND  
Judge of Appeal

I agree

  
F. H. GROSSKOPF  
Judge of Appeal