

134/55

In the Supreme Court of South Africa  
In die Hooggeregshof van Suid-Afrika

*[Handwritten signature]*

DIVISION).  
AFDELING).

APPEAL IN CRIMINAL CASE.  
APPEL IN KRIMINELE SAAK.

*[Handwritten name]*

Appellant.

versus

*[Handwritten name]*

Respondent.

Appellant's Attorney  
Prokureur van Appellant

Respondent's Attorney  
Prokureur van Respondent

Appellant's Advocate  
Advokaat van Appellant  
*[Signature: D. E. Lubinsky]*

Respondent's Advocate  
Advokaat van Respondent  
*[Signature: Marinus J. van Niekerk]*

Set down for hearing on: - *Wednesday, 31<sup>st</sup> August, 1955.*  
Op die rol geplaas vir verhoor op: -

*(WLD) 11/8/55. Before Mr. Neve, Fagan, J.P. at Point BPP.*

*[Handwritten mark]*

*Court not called upon  
10.20 am. Appeal dismissed. Conviction &  
sentence confirmed.*

*[Signature]*  
*[Signature]*

JUDGMENT.

PRICE, J: The accused in this case is charged with the crime of murder, in that, upon or about the 14th March, 1955, and at or near Droëheuwel in the district of Randfontein, he murdered Dick Mpunzi. I may mention that Dick Mpunzi was his father. The story told by the accused is as follows. He says he admits killing the deceased because the deceased was fighting and wanted to chop him with an axe. He says he was in the room with  
10 his father and Evelina at eight o'clock in the evening of the 14th March, 1955, and there was a lamp burning in the room, and it was dark. He was out of work and was looking for work that day, and the evidence is that he is usually in work, but he had been out of work for a week at that time. The father with whom he was apparently living and who is now deceased, asked him why he was not working and he says at that stage Evelina and his brother went out. Evelina was called and she gave  
20 evidence. He says that he did not reply to his father, and his father also accused him of being a witch doctor, which he seems to have resented, and he took his belongings intending to leave. That is the impression his evidence gives. He says after that his father took an axe and chopped at him with it. There was then a struggle, and the accused wrenched the axe from his father. The accused lifted up his blankets to ward off the blows, and then he got hold of the axe and took it away from his father. The lamp was then still burning. There was then a struggle and the light went out, and  
30 during the struggle he says he struck his father with the  
axe/....

axe. He tried to free himself, but his father grappled with him, and he used the axe. He then ran to a compound and told the people to tell the police that he had injured his father. He says when he struck his father his father's arms were round the top part of his body. Now, that is the only evidence we have got on how the actual killing took place, and there is no particular reason why the Court should disbelieve that statement. It may or may not be true. It is not clearly untrue  
10 beyond a reasonable doubt, so it may be true, and if it may be true the Court must act as if it was true, and the question is whether on that evidence the accused committed the crime of murder or some lesser crime.

Mr. Lubinsky, who appeared for the accused, said that a case of self-defence was made out by the accused, because he said he was trying to get the axe away from his father and wrenched it from him, and his father had not released him and was still grappling with him, and there was still a possibility of the father getting the  
20 axe and chopping the accused. He also pointed out that the handle of the axe is quite round, and it is not possible to know in the dark whether one is chopping with the cutting edge of the axe or the back of the axe or with the side of the axe. The accused himself, when recalled on that point, said that he did not know whether he was chopping with the cutting edge or which edge. Then Mr. Lubinsky said that apart from the question of self-defence, the accused was striking wildly and had no intention of injuring the deceased, and he was only  
30 hitting at him with the axe to get free. The Court has come to the conclusion that on the story told by the  
accused/....

Judgment.

accused himself, the accused is plainly guilty of Culpable Homicide. At the stage at which the accused struck the deceased, the accused had disarmed the deceased. It is perfectly true that the deceased, according to the accused's story, could have had his arms round the accused and was still grappling with him, but there were several things that even a person in the heat of a fight, could have done and should have done. He could have thrown the axe away. He could have hit the  
10 deceased with his fist. He could have continued the struggle and got rid of the axe. He could have struck at the deceased lower down, but he struck at the deceased with an extremely dangerous weapon towards where the head and the upper part of the body of the deceased were, and where any blow might have been dangerous and possibly fatal. If he had struck the deceased round his legs or his knees or lower down on the body, it would have been a different thing, and he could clearly have done that. There is no reason at all why he should have  
20 struck at the head or near the head of the deceased, and it was not essential for the purpose of self-defence. The accused is found guilty of Culpable Homicide.

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The accused admits his previous conviction.

SENTENCE.

PRICE, J: Tell the accused that this is the second time he has assaulted a person with a dangerous weapon, and he will be sentenced to three years imprisonment with hard labour/....

Sentence.  
 Application for  
leave to appeal.

labour and six strokes.

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MR. LUBINSKY applies for leave to appeal in regard to the merits and the sentence. As far as the merits are concerned he submits that there is an arguable issue on the question of self-defence, and there is also an arguable issue on accidental killing, and he asks that the sentence of strokes should be suspended pending the hearing of the appeal.

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JUDGMENT ON APPLICATION FOR LEAVE  
 TO APPEAL.

PRICE, J: I am not prepared to grant leave to appeal in this case. It seems to me that the case is not arguable. The accused can apply to the Appellate Division for leave to appeal. As it is indicated to the Court that application will be made to the Appellate Division in Bloemfontein, it is ordered that the strokes will be suspended for three weeks, in order to give him an opportunity to file his application. If the application is filed the strokes will be suspended pending the application, and if it is not filed the strokes will be administered.

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