

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MOLATO 'MATLI

Appellant

v

REX

Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice, Mr. Justice  
T.S. Cotran on the 27th day of January, 1982

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The applicant, a boy aged about 16 when the offence was committed (perhaps two months under) was convicted on the 13th August 1981 by the Senior Resident Magistrate at Leribe of the crime of culpable homicide on his own plea of guilty. He was ordered to be detained in a Juvenile Training Centre. In effect that means a detention period of a minimum of 9 months in terms of s.9(2) of the Prisons Proclamation (Vol. II Laws of Lesotho p. 1284).

He appealed against his sentence only.

On the 15th January 1982 I confirmed the conviction and sentence but ordered the sentences to be suspended for one year on condition that the appellant be not convicted of an offence involving violence to the person in which he is sentenced to substantive imprisonment exceeding two months. This suspension period will take effect from the 15th January 1982.

I said I will file my reasons later and these now follow .

The vital facts could hardly be disputed. The appellant and the deceased, a boy of about the same age, attended Leribe High School. They were boarders and lived in different students hostels. A boy called Lerato Mahlapha came to the dormitory where the deceased sleeps and complained to the boys there that he had lost M20. They were about to go to bed. The deceased said that he found M10 and handed it

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to the owner. Lerato went away. He, the appellant, and others returned after a short while. They were convinced that the other M10 had been secreted by someone in that dormitory, not necessarily by the deceased, and proceeded to conduct a search. The appellant started to strip one boy called John. He was offensive to the deceased and to other boys inspite of the fact that a Prefect was present. The deceased apparently grabbed hold of a stick and made as if he was going out of the dormitory. There was a commotion when the lights were put out and the appellant stabbed the deceased once with a knife that penetrated the heart.

At first sight the sentence of detention did not strike me as excessive.

However several factors have influenced my mind to suspend this sentence.

1. The offence was committed on 4th August 1980, and the appellant had been on bail since at least the 23rd October 1980; that is a period of fifteen months. During this time he continued with his schooling.
2. The appellant had shown great remorse right from the beginning and had pleaded guilty.
3. The appellant's and the victim's families have reconciled and an agreement as to compensation had been entered into in accordance with Sotho Law and Custom.
4. The Children Protection Act 1980 was on the Statute Book when the offence was committed (though not in operation) from which it is clear that the Legislature had intended, at the appropriate time, to alter the law in favour of children below the age of 18. At the time the appeal was heard however the Act was in operation and the Court took this change of policy into account.

In my opinion to confirm the period of detention so long after the appellant had been attending school would not have been in his paramount interest.

  
CHIEF JUSTICE  
27th January 1982

For Appellant . Adv. Ramodibedi  
For Respondent: Mr. Kabatsi