

IN THE LESOTHO COURT OF APPEAL

In the Appeal of :

TAUTE SHESHE
MAKATANE SHESHE
MATELA SHESHE
MOHLALENYANE SHESHE
MATOKA SHESHE

Appellants

v.

R E X

Respondent

HELD AT MASERU

Coram:

MAISELS, P.
SCHUTZ, J.A.
GOLDIN, J.A.

J U D G M E N T

Maisels, P.

The five appellants were indicted in the High Court on a charge firstly of murdering one Tsibola Malebo, and secondly on a charge of attempting to murder one Tajane Maroba. They pleaded not guilty but they were found guilty, and the sentences imposed upon them were as follows :-

The first appellant was sentenced to five years imprisonment on the first count and three years imprisonment on the second count, the sentences to run concurrently;

The same sentence was imposed on the second appellant;

With regard to the fourth appellant, who is the chief in the area in which these crimes were alleged to have been committed was sentenced to seven years imprisonment on the first count and to three years imprisonment on the second count, again the sentences were made to run concurrently;

The fifth appellant was sentenced to three years imprisonment on the first count and he was also sentenced to two years imprisonment on the second count. I should have mentioned that there were three counts against the appellants but apparently it is only the fifth appellant who was found guilty on the third count which was one of assault with intent to do grievous bodily harm, and on the count he was sentenced to twelve months imprisonment,

and all the sentences were to run concurrently.

The sixth appellant who was a woman was sentenced to twelve months imprisonment on the first count, and to six months imprisonment on the second count, those sentences were also to run concurrently.

I understand the position to be that she has already served the sentence.

The learned Chief Justice presided at the trial which was one of undue length, occasioned largely by the introduction of matters apparently really irrelevant to the true issues in the case. It seems to us that he exercised the patience of Job in listening to all the evidence and particularly the cross examination of the Crown witnesses.

We have given consideration to the whole of the Learned Chief Justice's judgment with regard to the correctness of the conviction, and we are left in no doubt that the learned Judge was perfectly entitled, indeed obliged, on the evidence to return the verdict which he did. We are quite unpersuaded by the arguments that Mr. Maqutu on behalf of the appellants placed before us.

A great portion of this argument was devoted to the alleged non complicity of the fourth appellant in the crime. So far from agreeing with what Mr. Maqutu said in this connection, we are completely satisfied that he incited and instigated the whole of the events which led to the death of the unfortunate deceased and to the most serious injuries inflicted on Tajane Maroba. There is no doubt in our minds that he felt that his authority as a chief was being thwarted by the deceased and his wife. It appears that the deceased did not recognise his authority and it is clear to us that he had made his mind once and for all to show that he was in charge of that area and that he could really do what he liked with his subjects. He took upon himself the role not only of Judge but that of Executioner. The learned Judge was undoubtedly correct in finding him guilty.

The learned

The learned Chief Justice also carefully considered the question of the proper sentence to be imposed in the case. In this aspect of the matter he was very properly guided by the opinion of the assessors who sat with him. He gave full weight to their opinion that the fourth appellant was faced with an extreme act of provocation due to the non recognition by the deceased of his rights as a Chief, ~~As~~ also of the fact that his, the fourth appellant's attempt to other legal redress had not met the success. It has to be borne in mind, however that a Chief has a greater responsibility to respect the laws of the land than the ordinary citizen, it is part of his duty to see that Law and Order are maintained, and he should be the last person to encourage acts of violence such as he did and such as occurred in the present case with the most distressing results.

If one has ^{any} criticism of the judgment of the court a quo, it is perhaps, giving due weight to all the extenuating circumstances in favour of the fourth appellant and the other appellants, that the sentences were if anything on the light side.

In the result, it seems to me that there is no ground whatsoever, upon which this court would be justified in interfering either with the convictions or the sentences in this case.

The appeals are without substance and they are dismissed.

Signed
I.A. MAISELS
President

I agree Signed
W.P. SCHUTZ
Judge of Appeal

I agree Signed
B. GOLDIN
Judge of Appeal

Delivered this 11th day of October 1982 at Maseru.