

IN THE HIGH COURT OF LESOTHO

In the matter of :

REX

v

1. NTSOEAMOKOTI MOHAU PITSO
2. TSILONYANE TJOLOANE

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice
T.S. Cotran on the 10th day of November 1982

The two accused persons whom I shall call Pitso(A1) and Tjoloane(A2) appear before me on an amended indictment that contains two counts one of culpable homicide and one of assault with intent to do grievous bodily harm. The particulars state in effect that they jointly and unlawfully caused the death of Leoba Joala and that they jointly and unlawfully assaulted Tsehla Mohobane with intent to cause him grievous bodily harm, on or about the 7th November 1981 at or near Ha Horoho in the district of Butha Buthe.

A1 pleaded guilty to the culpable homicide of Leoba (the deceased) but not guilty to assault with intent to do grievous bodily harm to Tsehla Mohobane, and A2 pleaded not guilty to the culpable homicide of the deceased but guilty of assault with intent to do grievous bodily harm to Tsehla.

Crown counsel was disposed to accept Pitso's and Tjoloane's pleas of not guilty but left the matter to the Court. Mr. Matsau for Pitso (A1) and Mr. G.N. Mofolo for Tjoloane (A2), admitted all the evidence as it appears on the preparatory examination records. Two preparatory examinations were held because Pitso(A1) appears to have absconded or could not be found when the preparatory examination against Tjoloane had started. A1 has been in custody for 6 months and A2 for 12 months.

The Court was reluctant to accept the pleas of not

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guilty because there were at least two items of evidence deposed to by witnesses (whose evidence the defence accepted) that prima facie shows, or tends to show that the accused persons had a common purpose. We held that they had a case to answer but they elected, as they are by law so entitled, to keep silent.

After considering the evidence again the items that emerge against the accused are :

- (1) That instead of taking the directions to their own homes after the drinking party, they took the direction deceased and his companions had taken.
- (2) That A1 told a witness upon whom he and A2 descended called (Mofihli Mabusane) "Let us go man we will ultimately find them".

The accused persons, as I said, elected to keep silent and the question to be answered is whether what has emerged is sufficient to decide conclusively that there was common purpose.

On (1) the time was just after dusk and there was evidence that at the village of the deceased there was another drinking party. It is therefore possible that the two accused had taken this direction not with the joint intention of assaulting the deceased and or his companions but to continue drinking at another place.

On (2) there is evidence that A1 and A2 either hid their blankets or had lost them when following the direction taken by the deceased and Tsehla but it is not clear from the evidence what happened exactly. The words "let us go man we will ultimately find them" may have referred to the blankets or to the deceased and his companions. It is not abundantly clear to me that they necessarily referred to the deceased and his companions though my assessors think it must have.

The deceased had, in the party he left, insulted a number of persons present, and threatened to use his knife to kill. He was not addressing anyone in particular and seemed the worst for drink. If any of those present (and A1 and A2 were) wanted to punish him, there was no motive or cause for anyone to punish Tsehla for he did not in any way

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associate himself with the words of the deceased.

I think the evidence falls short of proving common purpose with the result that I enter a verdict of guilty (as pleaded) by A1 on count 1, guilty (as pleaded) by A2 on count 2, and a verdict that A1 is not guilty on count 2 and A2 is not guilty on count 1. My assessors finally agreed with this Judgment.

SENTENCES

A1 : (Count I) - 6 years imprisonment of which 3 years are suspended for 3 years.

A2 : (Count II) - 4 years imprisonment of which 2½ years are suspended for 3 years.

The suspension will be on condition that neither of the accused be convicted of an offence involving violence to the person in which a sentence of more than six months imprisonment is imposed.

My assessors agree.

CHIEF JUSTICE
10th November, 1982

For Crown : Mr. Kabatsi

For Accused 1 : Mr. Matsau

For Accused 2 : Adv. G.N. Mofolo