

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

- Applicant

v

THABO ISAAC MAPHALALA  
FELANG MAKATSA  
PUSELETSO NYAKHANE

- 1st Respondent  
- 2nd Respondent  
- 3rd Respondent

S E N T E N C E

Delivered by the Hon. Mr. Justice M. P. Mofokeng on the  
12th day of December, 1983

I shall take into consideration what both Counsel have said.

I have been requested, for the purpose of sentence, to equate this matter to that of Rex v David Khesa & Another, CRI/T/14/83 (see judgment dated 1st November, 1983) in which the two accused were escorting a confessed thief to a place where he was going to point out where the stolen property was hidden. On the way he twice attempted to escape but was on each occasion caught, he was then assaulted and in trying to avoid such assault he retreated and fell over a cliff on to a stony surface. He sustained serious head injuries and died almost immediately. In that case the Court warned seriously against citizens who took the law into their hands. In their special circumstances they were sentenced to pay a fine of M200.00 or in default /of ...

of payment to undergo imprisonment for a period of four years.

In the present case the chastisement on the deceased was spread over a long period. He was beaten with sticks and a sjambok of ordinary size but the cumulative effect of such a beating was appreciated by the accused. It was savage in the extreme. The deceased, during the process of this chastisement, fell at least three times. According to the medical evidence, he died of subdural haemorrhage and shock. In the case of Rex v David Khesa & Another (supra) the period of chastisement was very short indeed.

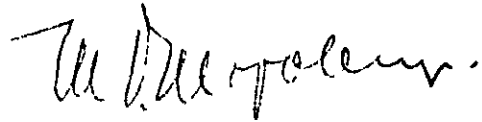
Once the deceased had been arrested and there was the suspicion that he had committed rape, he should have been marched to the Police Charge Office once it became obvious that the headman was inactive. After all, that is what the first accused did the following morning, he went straight to the police.

Instead of doing that they decided that they would arrest, put the deceased on trial and pass judgment on him which resulted in his death. That type of justice cannot be countenanced by the Courts. It must be discouraged by imposing suitable deterrent sentence. Only the Courts of law are authorised by law to deal with transgressors of the law.

/The sentence ...

The sentence of the Court and being lenient on each accused is one of payment for a period of the sum of M1,000.00 or in default of payment to undergo imprisonment for a period of six (6) years.

Each will pay immediately a sum of M200.00 before his release. The balance will be at the rate of M100.00 per month each until it is liquidated.



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J U D G E  
12th December, 1983

For the Crown : Mr. Kamalanathan  
For the 1st Accused : Mr. Khauoe  
For the 2nd & 3rd Accused. Mr. Matlhare