

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

v

TANKISO TSIBELA

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 1st day of June, 1983.

The accused appeared before me charged with murder in that on or about 28th June, 1982 and at or near Kao in the district of Butha-Buthe he unlawfully and intentionally killed Lefu Fane. He tendered a plea of guilty of culpable homicide and Mr. Gwentshe who represented him in this matter informed the court that the plea was in accordance with his instructions. Mr. Kabatsi, counsel for the crown, accepted the plea as tendered and it was accordingly entered.

In his short summary of the facts of the case, counsel for the crown told the court that the accused and the deceased were respectively a police trooper and a police volunteer reservist. The two men were the best friends and both stationed at Kao police post in the district of Butha-Buthe. During the day, the accused and the deceased went for drinks in a nearby village. On the evening of the same day after they had returned to their police post, they were in the same office when accused unloaded his commando rifle in order to check his bullets.

2/ After counting

After counting the number of the bullets, accused negligently cocked the rifle and pulled the trigger in order to make sure that the bullet chamber was empty. In so doing he did not, as one would have expected, point the rifle upwards. The gun was, apparently, not completely emptied and it fired a bullet that hit the deceased who was sitting on a chair in the office. The deceased was killed instantly. The accused panicked and tried to creat a story that the police post had been attacked by some unknown people with firearms thereby killing the deceased in the process. He fired several bullets in the police post in a mock defence of the post and even radioed Butha-Buthe police for assistance.

However, investigations later revealed that the police post had not been attacked by anyone and that the deceased had been shot by the accused.

A post mortem examination which was subsequently performed on the deceased's body revealed that the deceased had sustained a gun shot wound starting 3 cm from behind the right ear through the base of the skull along the cerebellum and pons cerebre, the bullet exiting through the left eye. Death resulted instantly.

Following the prosecution's acceptance of accused's plea of guilty to culpable homicide, the provisions of sec. 240(1)(a) of the Criminal Procedure and Evidence Act 1981 were invoked and the accused was accordingly convicted of culpable homicide on his own plea without hearing any evidence.

The accused now stands before this Court to be sentenced. Mr. Gwentshe on behalf of the accused has addressed the court in mitigation. For the benefit of the accused, he invited the Court to take into account the fact that the accused was a first offender, he had shown

remorse by confessing his guilt unequivocally and pleading guilty, he was a friend of the deceased, he had been in the police force for five (5) years during which period he faithfully served this country without blemish, since the occurrence of this unfortunate incidence, the accused had been under an interdiction without pay and there was nothing but misery in his family, accused had taken an oath to maintain law and order but unfortunately on the day in question, he had apparently imbibed too much liquor and, as Mr. Gwentshe puts it, his noble ideal of keeping law and order had rescinded into the distant horizons.

I concede that all the points referred to by the defence counsel in mitigation have properly been raised for consideration in determining what sentence is appropriate for the accused. It must also be borne in mind that in cases of this kind the relatives of the deceased are, almost invariably, likely to bring a civil suit against the accused for compensation. If the Courts of Law were to avoid the accusation that they punish a person twice for the same wrong, the Court must remember that it is probably the first and there is yet another court to visit the accused with punishment.

Nevertheless, I am not prepared to turn a blind eye on the seriousness of the offence with which the accused has been convicted. Firearms are not toys to play around with. They are deadly weapons which should never be entrusted with drunkards and irresponsible people. As a member of the police force, the accused must have been trained in the precautions of handling a firearm.

Notwithstanding his training, the accused went for a drinking spree after which he carelessly fiddled with a gun in a house where there was clearly another person. If he were not sure and wanted to check that the bullet chamber was

empty, a sensible thing for the accused to do was to go out of the house or at least make certain that the gun was not pointing at another person in the house before pulling on the trigger. He should have known that as a matter of precaution, it is often said even the devil can load a firearm - an emphasis that great care should always be taken in the handling of firearms. Failure to heed safety rules in the handling of his firearm was, no doubt, negligence on the part of the accused. The results were most deplorable.

Members of the Police Volunteer Reservists are responsible villegers who, in reply to a call made by Order No. 33 of 1970, have shown willingness to assist the police in the detection and prevention of crime in this country. It would be intolerable if negligent people like the accused were to expose their lives to unnecessary danger. There is, therefore, the need to bring it home to the accused and people of his mind that negligent handling of firearms will, for obvious reasons, be always discouraged by the Courts of law.

In the result, I impose a sentence of M180 or 18 months imprisonment, half of which is suspended for 3 years on condition that the accused is not convicted of any offence, involving violence on another person, for which he is sentenced to a term of imprisonment without an option of a fine, during the period of suspension.

My assessors agree.



B.K. MOLAI
JUDGE

1st June, 1983.

For the Crown : Mr. Kabatsi
For the Defence : Mr. Gwentshe