

IN THE HIGH COURT OF LESOTHO

In the matter of :

REX

v

ALPHONSE QABANG

J U D G M E N T

Delivered by the Hon. Acting Chief Justice, Mr
Justice M.P. Mofokeng on 21st day of September
1983

The accused, Alphonse Qabang, is charged with the crime of murder. It being alleged that on the 11th day of April, 1982, and at or near Mokhotlong Reserve in the district of Mokhotlong, he unlawfully and intentionally killed one Lerata Lethole Lerata. He pleaded guilty to culpable homicide But his plea was not accepted by the Crown.

There have been a few admissions made. The doctor's evidence has been admitted, and this is briefly to the following effect that the cause of death was due to shot wound injury. There were two wounds. They were caused by a high velocity object. The entrance was on the fourth intercostal space on the right. The wound was .5 x 1 cm. The outlet wound was on the left side on the lateral margin of the scapula. The wound was opened about 2 cm around damaged tissue of about 5 cm. There were no head injuries. There was bleeding out of the nose after examination of the chest.

Trooper K'hesa deposed briefly that he lived with the accused, apparently at the Police Quarters. They were in

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this house. He, Trooper K'hesa was cooking, while the accused lay on a bed. The deceased arrived and pushed the door violently, but the lower portion was closed by the wooden device which closed it. The deceased was pushed back.

The accused is alleged to have uttered certain words to the deceased or to the accused rather and said his home boys were used to this sort of practice. Whereupon the deceased said he had not come to him but he had come to Trooper K'hesa. There followed an exchange of words. The ultimate end of which was that there was a general commotion. There the deceased carried two sticks, which formed part of the large exhibits before Court. However Trooper K'hesa intervened. The deceased went to the house where he lived. He soon came back.

During the fight Trooper Makhele also tried to intervene and was knocked on the knee. The deceased then passed on to his house. When he came back, he found Makhele seated on the ground, apparently nursing his sore knee. However, Makhele saw that he was in possession of a revolver, Exhibit 2. He quickly snatched it out of his hand, but the deceased, nevertheless, went towards the house where the accused was. As he approached, he was told not to go through the fence, or words to that effect. But as he came nearer, Trooper K'hesa was cooking. He says that the next thing when he realised the accused wanted to hit the deceased with a stick. He tried to intervene. They went out, and it was during this time when he heard the accused utter certain words to the effect that he could shoot the deceased, and the deceased said "You mean you can shoot me with it?" and the accused replied and said "Now".

And I may mention that before the deceased arrived the second time, he had said openly, look I have also thrown away my sticks, they have dispossessed me of my firearm, I have thrown away the stones. However, when Trooper K'hesa looked back, in the direction of the accused, to inquire what was happening, and saw Exhibit 1 .303 rifle, accused pointed it at him and said "If you are also in this conspiracy, I will

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shoot you", or words to that effect. And Trooper K'hesa says he ran away. He was hardly behind the house when he heard the sound of a firearm. The accused ran away, in possession of Exhibit 1.

Lebohang Leneha was approaching Trooper K'hesa's house. He saw three people standing outside; the accused, K'hesa and the deceased. The accused was pointing Exhibit 1 at the deceased. He said he could shoot the deceased. He, Leneha, turned to K'hesa to speak to him. Then there was a sound of a firearm. He ran away to raise an alarm. He saw the accused run away carrying Exhibit 1.

The evidence of the arrest of accused No.1 as deposed to the preparatory examination has been admitted. The accused now changes his plea. In the case of Rex v Bothata Clement Jonkoro CRI/T/17/82 delivered in this Court on the 8th September 1983, this Court stated the position at this stage of the proceedings as follows, and I quote:

"However, at the end of the evidence, the accused changed his plea from not guilty to one of guilty to culpable homicide, Crown Counsel has consented. This consent is not to be in writing in terms of section 5(c) or section 6(i) of the Criminal Procedure and Evidence Act 1981. Those sections refer specifically to the process of discontinuing a prosecution, which is not the case here. In the case of Kutoane v Rex CRI/A/25/76 delivered by this Court on the 18th June, 1976, the principle involved in the present situation was stated as follows: 'From the perusal of the record, it does not appear that the learned magistrate either consented or refused the offer of a change of plea by the accused. Once the accused has pleaded, the Attorney General has no power to accept, without the consent by the Court, a plea different from that already recorded. See R. v Komo 1947(2) SA 508 at 511. (and see also Rex v Ralikhoho Aupa Pitso CRI/T/1/83 delivered by this Court on the 12th day of September 1983). The Court has the power to allow a change of plea".

In this particular case, the Crown has neither consented nor indicated its attitude towards this change of plea. However, the decision rests finally with the Court.

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It was depos~~ed~~ by Trooper K'hesa in his evidence that both the accused and the deceased were drunk. He had not been with the accused that morning. The accused came back after church services. He was very evasive when he came to what it was meant by "after services". He said the deceased was more drunk than the accused. Whatever that meant, his only criteria was that the deceased was more argumentative. But then immediately he qualified his statement by saying, so was the accused because he got angrier and angrier as time went on. What he was not asked, was whether that was his nature, or whether he became aggressive because of his state of intoxication. That question has been left wide open until the close of the Crown's case.

Leneha was truthful. He said he had no time to look at either the sobriety or otherwise of these two people. When he arrived there, a firearm had been pointed at another person. I can imagine the atmosphere must have been electrified. If he had been a liar, he would have told me that the accused was sober. We find it extremely difficult to say whether or not the accused, or what quantity or to what degree the accused was drunk that day. But he wasn't as drunk as all that. We will accept his plea, in the final analysis.

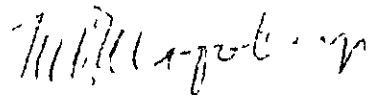
In passing sentence in this case the Court will bear the following factors in mind as being of paramount important (apart from what counsel for the defence has submitted on his behalf).

The society have a right to look to the members of the police force for protection and for keeping law and order. It is thus for the members of that law enforcement authority to be exemplary at all times. They are given very heavy responsibilities which they are expected to discharge with honour and dignity. They are expected to obey the instructions of their superiors at all times. At all times they must remain sober. The policeman holds of position of very high esteem in the society. However, the accused

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through drinking disgraced his colleagues and superiors. He disgraced the very society which placed its entire trust in him. In that act of stupidity, foolishness and certainly aggravated by drinking he played about with a weapon he has been taught, as a policeman ought to know, that a firearm is a lethal weapon if placed in the hands of an inexperienced or incapacitated person. The accused was the second police officer to be convicted by this Court for having killed a person with a firearm this very month. Such acts are obviously directed towards discrediting the police force in the eyes of the public. The perpetrators of such acts must be severely punished to bring home to them and their colleagues that the Courts will never tolerate such a situation.

Sentence : 8 years imprisonment.



ACTING CHIEF JUSTICE

21st September 1983

For Crown : Adv. Nku

For Defence: Adv. Mlonzi