

IN THE HIGH COURT OF LESOTHO

In the matter of:

R E X

V

LEBOHANG MAAMA
SEBALA KHOLUOE
KOTELI KOTELI

J U D G M E N T

Delivered by the Hon. Acting Mr. Justice
J. L. Kheola on the 16th day of November, 1984

The accused are charged with the murder of Makalo Nkuru (hereinafter called the deceased) on the 20th October, 1983 at Ha Makoaga in the district of Mophale's Hoek. To this charge the accused pleaded not guilty.

The main Crown witness is Rankebo Mothetsi. At about 8.00 p.m. on the 20th October, 1983 he was at his home when he heard one Lucia raise alarm at the stream below the village. He ran in the direction of the stream where he found the following people: Mosoeu Kaphe, Khoase Rampokane, accused 1, Lucia, Lerontina and others. At that time he saw the deceased ahead of them, he was running away. The people were chasing him but he saw no blanket alleged to have been stolen by the deceased. The rest of the younger people returned home while he (the witness) and accused 1 followed the deceased. When they crossed the second stream they met accused 2 and accused 3. They explained to them what the
/deceased ...

deceased was alleged to have done. Accused 2 and 3 said that the only thing to be done was to belabour him with sticks. It was accused 2 who suggested that the deceased should be beaten up. They chased him and caught him near the home of one Polo. They hit him with sticks on the head and all over the body. Accused 1 used a stone as well and hit him on the head with it.

He noticed before they left that the deceased was still alive but was unable to walk. Although he did not see the actual wounds they had inflicted upon the deceased he realized that the injuries must have been serious. He did not report the matter to anybody that right, but on the following morning he reported to the chieftainess of the village. They hit the deceased with their sticks as a punishment for what he had done despite the fact that they all knew him to be a lunatic.

Three sticks were handed in as exhibits in this case and P.W.1 identified the knobkerrie (Exh.1) as the property of accused 2 with which he hit the deceased, the brown stick (Exh 2) as the property of accused 1, the grey stick (Exh 3) as his property. All the sticks were used in the assault of the deceased.

Accused 1 admitted that when he heard the alarm he went to the stream from where the alarm came. On his arrival at the stream he met people who were already returning home and he joined them. He spoke to Mosoeu and Lerontina who explained to him what the deceased had done. He also saw

/the deceased ...

the deceased walk towards the home of Polo. He denies that he took part in the killing of the deceased. He does not know Exhibit 2.

Accused 2's defence is that commonly known as alibi. At the relevant time he was in the company of one Ramarou Kaphe and they were drinking beer together. They left together and went to his (accused 2's) home where he gave Ramarou Kaphe some tobacco and they sat down and smoked. He got into his bed and slept before Kaphe left. Kaphe confirms that he met accused 2 and 3 at the home of Nokoana but denies that they drank beer together with Accused 2. He also denies that when he later went to Accused 2's home they walked together. His version is that Accused 2 was already asleep when he arrived at his home. He was given the tobacco by accused 2's wife and never sat down and smoked with accused 2.

Accused 3's alibi is that when the alarm was raised he was at the home of a healer named 'Maliketso Khoantle where his wife was to be treated with some herbs. He says while the treatment was going on his wife and 'Maliketso never left the house. This cannot be true because 'Maliketso and his wife gave evidence that at one time 'Maliketso left the room and went to another room, when she returned she reported that there was some noise at the home of Polo and she left them in her room and went there.

There is no doubt that P.W. 1 is an accomplice and that his evidence must be approached with extreme caution. the Court should warn itself of the danger of convicting upon

/the evidence...

the evidence of an accomplice and show that it has heeded the warning by pointing to some factor which can properly be regarded as reducing the risk of convicting an innocent person. (R. v Mpompotshe and another, 1958(4) S.A. 471 (A.D.)). I have read the deposition of P.W.1 at the preparatory examination and he does not say that he took part in the assault of the deceased. All he said in the deposition is this:

" Makalo ran away and we gave chase. When he crossed the second river he met accused 2 and accused 3. Accused assaulted Makalo and he ran further. They were hitting him with sticks. He went to one "spoto" house. There accused 1 hit him with a stick on the head and he fell under the force of the blow. The two other accused belaboured him while he was on the ground. Accused 1 hit Makalo with a stone on the head."

At the trial P.W.1 gives an entirely different story. He and the three accused caught the deceased behind the house of Polo and they all belaboured him with their sticks from head to the body. Mr. Kabatsi, Counsel for the Crown, has suggested that P.W.1 left out that he took part in the belabouring of the deceased probably because the public prosecutor did not lead him in such a way that he had the chance to say it. The fact that a witness is an accomplice is so material in a case that I doubt if any public prosecutor would overlook it, more especially where the case depends on the evidence of a single accomplice. Even at the trial Mr. Kabatsi declared P.W.1 as an accomplice only after the witness had given his evidence-in-chief. This gave me the

/impression ...

impression that he too was not aware that P.W.1 was an accomplice until after he had given his evidence. I say this because the normal procedure is to declare an accomplice before he takes oath.

At the preparatory examination P.W.1 said he could not identify the sticks used by the accused as it was at night. At the trial he identified the knobkerrie as the stick used by accused 2, the brown stick by accused 1 and the grey stick as his property.

I agree with Mr. Kabatsi that where the accomplice is beyond all questions a satisfactory and convincing witness while the accused is the opposite the Court may convict the accused even if there is no corroboration. He has also submitted that the evidence of P.W.1 is such that there is nothing to show that it is a lie. I disagree with him on the last point. I have considered the evidence of P.W.1 and have come to the conclusion that he is an unreliable witness. He keeps on making improvements to his original statement till we do not know where the truth ends. It is true that some of the accused, especially accused 2 and accused 3 have been shown to be liars but that fact cannot turn P.W.1 into creditworthy witness. It is possible that an innocent man may put up a false story because he thinks that the truth is unlikely to be sufficiently plausible (Maharaj v Parandaya 1939 N.P.D. 239).

For the reasons given above I have found that the Crown has failed to prove its case beyond a reasonable doubt

/and ...

and the accused are found not guilty and discharged.

My assessor agrees.

ACTING JUDGE

16th November, 1984

For the Crown : Mr. Kabatsi

For the Defence : Mr. Mofolo and
Mr. Lebona