

IN THE HIGH COURT OF LESOTHO

In the Matter of

R E X                      Plaintiff

v

TAMOKANYANE THEBE              Defendant

J U D G M E N T

Delivered by the Hon. the Chief Justice Mr Justice  
T.S Cotran on the 19th day of April 1984

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The accused Tamokanyane Thebe appeared before me charged with murdering Mojalefa Thebe (his uncle) on or about 30th January 1983 at or near Ha Thite in the district of Maseru. The accused pleaded not guilty.

Mr Tsotsi for the defence admitted evidence of P W 3, P W 4, P W 5 and P W 6 as it appears at the Preparatory Examination.

Mr Peete for the Crown called two witnesses Masilo Thite and Ntonoka Thebe. At the end of the case for the Crown, Mr. Peete conceded that murder has not been proved, but submitted that the accused could be convicted of culpable homicide.

The evidence discloses that a stockfair party was held at the home of one Mohapi Matsaisa which went on throughout the day and continued into the night. Some time before the incident which gave rise to these proceedings, a quarrel developed between the accused and his uncle over a can of beer, and both were expelled from the party. Some time during the night, well after the minor quarrel, the

/people inside

people inside the hut where the party was being held heard a noise outside and on going out to investigate found the deceased stabbed on the neck and the accused with two wound injuries on his head. The deceased was heard to say "he has already finished me". No one witnessed what had actually taken place between the accused and the deceased and there was no evidence that the original quarrel about the beer continued. On the contrary the accused and deceased appear to have gone home. The accused's evidence is that on his way back to the drinking hut (well after the quarrel) he felt a blow with what seemed to him (he heard the noise of the instrument when the attacker dropped it) to be an iron rod (or a stick reinforced with steel wires) on his head which fell him down. On rising he felt another blow with apparently the same weapon. He says that since it was dark he did not recognise his assailant and he pulled out his knife and stabbed that person once in self defence and when about to stab a second time he realised that it was his uncle and immediately stopped.

One of the witnesses who was first on the scene testifies that the accused was utterly shocked and surprised and showed so much remorse that he himself, though injured on the head and bleeding, if not profusely, helped carry his uncle to hospital where he later died. It is the duty of the Crown to negative self defence, not necessarily by direct evidence of course, but by some circumstantial evidence. There is nothing in the circumstantial evidence adduced by the Crown remotely negating self defence quite the contrary and the Court must accept the accused's evidence of what happened between them viz. that he recognised his uncle after the first stab. The deceased

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words indicate that he recognised the accused but does not necessarily indicate that the accused recognised him. The accused may be telling me substantially the truth. He is entitled therefore to an acquittal.

CHIEF JUSTICE  
19th April 1984

For Crown            Mr Peete  
For Defendant      Mr Tsotsi