

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

NTHAKO RAMATHINYANE

V

R E X

J U D G M E N T

Delivered by the Hon. Acting Mr. Justice  
J.L. Kheola on the 1st June, 1984.

The appellant and two others appeared before the Subordinate Court of Mafeteng charged with the offence of culpable homicide, in that upon or about the 23rd day of August, 1982 and at or near Khoeli's village in the district of Mafeteng the said accused each or both or all of them unlawfully assaulted Malefetsane Makhanya and inflicted stick wounds upon him which caused the death of the said Malefetsane Makhanya on the 24th day of August, 1982 and did thereby negligently kill him.

They all pleaded not guilty but the appellant was found guilty as charged and sentenced to two years' imprisonment. The two other accused were found not guilty and discharged.

Prior to the 23rd August, 1982 the deceased had been a prisoner at Mafeteng prison where he was serving a term  
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of 12 months' imprisonment. When he escaped from custody an extensive search was launched and the chiefs of the villages surrounding Mafeteng township were notified and asked to arrest the deceased if he was seen in their villages. On the 23rd August, 1982 the deceased was arrested in the village at Chopo's. He was brought before chieftainess 'Mampho Chopho who instructed accused 2 and accused 3 to escort him (deceased) to Mafeteng on the following day. The appellant who was accused 1 at the trial was not instructed by the chieftainess to take any part in the escort but there is ample evidence that he was present at the meeting when accused 2 and 3 were given the instruction by chieftainess 'Mampho. The deceased slept at the chieftainess's place where a number of villagers including the chieftainess kept guard on him for the whole night. He sustained no injuries that night and was in a perfect condition on the following morning when accused 2 and 3 started their journey to Mafeteng township.

PW.1 'Mankokoto Lumisi lives in another village called Lumisi. At about 9 a.m. on the 23rd August, 1982, she saw three men escorting another man she identified one of the men as the deceased; When the four men were about 12 paces from her the appellant hit the deceased at the back with a stick but she did not see exactly where he struck him. The deceased's scarf fell down when he was hit with the stick. She asked the appellant why they assaulted a man so "severely". In answer to that appellant asked her if she knew the deceased. She told him

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that the deceased's home was at her maiden home at Ramohapi's. She further says that when they passed near her house one of the men hit the deceased on the waist with a stick.

PW.3 'Mateboho Selemela lives in the same village with PW.1. Her evidence was to the effect that on the 23rd August, 1982 she saw four men running up the hill and she identified two of them as the appellant and accused 2. A short while after that the appellant passed near her house on his way back to his village. She asked him what they were chasing and he said they were chasing a thief.

The deceased was handed over to the police at Mafeteng charge office by accused nos. 2 and 3. The policemen to whom he was given saw no injuries on him till they in turn handed him over to the prison authorities. PW.4 and DW.1 are prison officers who noticed that the deceased appeared to be very tired when they took him from the charge office. He was taken to a cell at the prison and when he undressed PW.4 and DW.1 noticed that he had bruises on the body and legs; but they saw no wound on the head because he had long hair. On the following morning the deceased was found dead in the cell.

According to post-mortem examination death was due to head injury i.e. haematoma of the occipital scalp, gross oedema of the brain (occipital).

Although the appellant denied having taken part in the escort and assault of the deceased I think the trial court correctly rejected his story and believed PW.1 and

/PW.3

PW.3 who saw them pass in their village. My difficulty with the finding of the trial court that the injury found on the head of the deceased was caused by the appellant is that there is no evidence to that effect. The evidence of PW.1 on which the trial court relied is to the effect that she saw when the appellant hit the deceased "behind" and she said she could not say where because she was not close to them and the appellant was directly behind the deceased while the other two men were on his (deceased's) sides. She says that his scarf fell when the appellant hit him but she does not say that the scarf had been worn on the head or around the neck. If she had made it clear that the scarf had been on the head one would probably say that it fell as a result of the blow on the head, but even that would not be conclusive because a blow on the body applied with great force may cause something on the head of the victim to fall depending on the victim's reaction. I therefore find that the finding of the trial court that the injury on the deceased's head which was the cause of death, was caused by the appellant is not supported by any evidence. It was erroneous because the deceased had bruises on the body and I see no justification in saying the injury on the head was inflicted by the appellant because the people who caused those bruises may have caused the head injury as well.

There is another possibility that the deceased may have sustained that fatal injury in his prison cell. There is evidence that when he was locked into the cell he appeared to be tired; he may have fallen down and hit the  
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floor with his head. This may appear to be a remote possibility but it is a possibility which cannot be completely ruled out. The true position, as I see it, is that nobody knows who caused that injury. Be that as it may, the appellant cannot go scot free because there is evidence that he hit the deceased with a stick somewhere at the back and that, in my view, amounted to common assault.

The appeal partly succeeds. The conviction and sentence of the trial court are set aside. The appellant is found guilty of common assault and sentenced to M60 or 6 months' imprisonment in default of payment of the fine. The appeal fee is to be refunded to the appellant.

It is a regrettable fact that on the 1st June, 1984 when the appeal came before me the appellant had already served 12 months of his original 24 months' imprisonment. He is to be released from custody immediately.

  
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ACTING JUDGE.

1st June, 1984.

For the Appellant : In Person  
For the Crown : Mr. Peete.