

IN THE HIGH COURT OF LESOTHO

In the Matter of

R E X

v

MERE NKONE

J U D G M E N T

Delivered by the Hon Chief Justice Mr Justice T S Cotran
on the 8th day of June 1984

The accused before me is indicted on a charge of murdering Adolf Mahase on or about the 25th November 1982 at or near Motsemocha in the district of Mafeteng

The accused pleaded not guilty to the charge. The depositions at the Preparatory Examination of Dr Mphu Ramatlapeng (P W.1), Kapoko Mere (P W 3), Kose Moeketsi (P W 4), 'Mathabang Ramokoena (P W 5) Rampe Mohasi (P W.6), Hlaele Khetsi (P W 9), Ralefufa Mahase (P W 11) as appeared in the record of the Preparatory Examination were admitted as true

The trial began with two assessors present. The accused had made a statement before a magistrate which was said to be in the nature of a confession and Mr Mda, Junior indicated that the accused wants to challenge that confession. The ground of the challenge was that though the statement as recorded by the magistrate was voluntarily given, some passages in that statement were not true

I did say there must be a trial within a trial but I allowed

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my assessors to remain in Court. During the evidence of the magistrate and the investigating officer some passages in the contents of the statement had been given before my assessors. During the interval I decided to discharge my assessors and the trial proceeded without them.

The trial within trial continued. The accused went into the box to give evidence on this aspect, i.e. admissibility. He said that he had to lie on some points to the magistrate in order to get a "more lenient sentence". That allegation was quite obviously nonsense. I held that the statement was voluntarily given. It was admitted accordingly.

Mr Mda for the defence then admitted the evidence of Tseliso Ramatlepe and Mahooe Mahase (P W 2 and P W 13 at the Preparatory Examination) and after the Crown closed its case Mr Mda said that the accused was prepared to plead guilty to culpable homicide. Mr Kabatsi submitted that it was too late in the day for him to say anything since his case was closed. The Court refused to bring in a verdict of culpable homicide as pleaded by the defence.

The accused went into the box to answer the charge. He testified that he shot the deceased in self defence.

The evidence from the admitted depositions and from the witnesses who testified before me disclose that a field belonging to the accused planted with crops (wheat and peas) had been ravished on two or three occasions between September 1982 and November 1982 by cattle belonging to people unknown. The accused himself works away and his wife had to deal with the problem. She was not apparently successful. On the night of 24th November 1982 when the accused was at home cattle trespassed on the same field and damaged his crops further. The chief investigated this complaint on the 25th November 1982 and found that the animals that
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caused the damage belonged to the Ramofota Mohlapiso family who admitted responsibility and agreed to compensate the accused in the sum of M200. The accused accepted this offer. It appears that on the evening of that same day one of the sons of Ramofota Mohlapiso, Mokete Simon (who did not give evidence as he could not be traced) had an unpleasant encounter with the accused during which harsh words were exchanged which included a withdrawal of the liability already admitted by his (Simon's) family.

What happened afterwards can only be gathered from the accused's own mouth, firstly before the magistrate who took down his statement, and secondly viva voce before me in Court. He says that after his altercation with Simon he went home and slept but before the break of dawn he got up, armed himself with a rifle (inherited from his father) and proceeded to his field. His object was to discover, if he could, the owner of any cattle that may trespass on his land and to frighten the person or persons with the gun. As fate will have it when he reached his field he saw cattle unlawfully grazing. It was still fairly dark. He then saw a person, whom he assumed to be the owner of the cattle, on his land. He told the magistrate as follows -

"I waited for their owner to arrive. I saw him in the middle of the field. I stood and he approached me. As he came near I bowed as if I was kneeling on one knee. When he raised his hand as if to belabour me, I pressed the trigger. The gun burst in a sound and he fell to the ground. I said I have finished him and there was no need to fire again, he had fallen on his back. He rose up again, as I saw him, he caught and stood but fell to the ground again. He fell to the ground of the peas field. I did not know who he was."

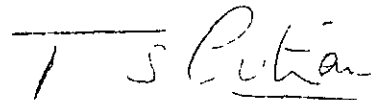
He retracted this statement, or the purport of it, in Court when on oath, and said that he shot the deceased in self defence because the

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deceased raised his stick and attacked him. The whole tenor of the evidence is to the effect that the purpose of the accused going to his field was not simply to frighten but to teach any person with animals trespassing on his field a lesson which include the use of a lethal weapon. Accused's offer to plead guilty to culpable homicide in the middle of the trial is inconsistent with a defence of self defence.

After the deceased was shot dead the accused raised a hue and cry about animals trespassing and causing damage. When the villagers gathered he was anxious to show them the damage but did not mention the shooting of a person dead until very much later in the morning. To no one whether in authority or otherwise did he complain that he had been attacked except when he gave evidence in Court, not the kind of thing an innocent man would do, and which I reject as false.

I think his defence is an afterthought and I find the accused guilty of murder as charged.



CHIEF JUSTICE
8th June 1984

For Defendant Mr Mda, Jr
For Crown Mr Kabatsi

Extenuating Circumstances having been found which reduce the accused's moral blameworthiness for this crime, he is sentenced to 6yrs imp
Sgd T S Cokan