

IN THE LESOTHO COURT OF APPEAL

In the Appeal of

HARETEKE TLALI                      Appellant

v

REX                                      Respondent

HELD AT MASERU

Coram

SCHUTZ            P.  
ODES                J A  
MILLER            J A

J U D G M E N T

Schutz P.

The appellant was convicted by Cotran C.J of murder with extenuating circumstances and was sentenced to 8 years' imprisonment. The deceased was Phatela Nkoko.

That there was bad blood between the appellant and the deceased relating to allegations and counter allegations of cattle theft is clear. The Court below was not able to determine the exact nature of the dispute or the exact rights or wrongs of it. Nor are we

Cotran C.J set out the evidence fully, and it is unnecessary for this Court to do more than give a brief resumé.

The deceased and the appellant were passengers on a bus from Maseru. Also a passenger was Chitjana Lebamang, also known as Maphoto. He shall be referred to by me as Maphoto.

The first Crown witness, known as Nteta, was a further passenger. She deposed that she sat in the back row together with the appellant and Maphoto. At a stage she moved three seats forward in order to converse with the deceased. Some time later she heard him scream "Joo". She saw that the appellant had hold of the deceased's neck and that he was pressing him down. Maphoto was next to them. She ran out of the bus in fright. Later she saw the deceased lying on the ground next to the bus. Maphoto was hitting him with stones. The appellant stood by them. After the whole incident had ended she saw blood on the seat on which the deceased had been sitting.

Ramosoanyane Tsiu, the driver of the bus testified that he heard a commotion at the back of the bus. People were trying to get out and obscured his view. Later he saw the deceased lying outside the bus with his bowels protruding. He also saw a person, other than the appellant hit the deceased on the head with a stone.

The third Crown witness Masekoche Tsomela had the most to contribute. She sat in the second seat from the front. She heard someone behind her say "stab this person

man" She did not recognize the voice, nor had she heard any previous altercation. When she looked round she saw the appellant pressing down the deceased. She also saw Maphoto holding a knife with the blade showing. She did not see any actual stabbing. The passengers were anxious to escape from the bus, and when the driver stopped the bus they did so. When she was out of the bus she saw the appellant and Maphoto coming out carrying the deceased out of the vehicle. As they alighted she saw that the deceased's intestines were protruding out of his belly. She was very upset by this and the blood, and fled up the road. When the three persons aforesaid were alighting she again saw the shine of the knife. The evidence of this witness was attacked on the basis that it was alleged that she had given some contradictory answers at the preparatory examination. We have examined the record, and the judgment where it refers to this matter, and it appears to us to have become clear at the trial that this attack had been based on a false premise. The reason was that there was confusion in the preparatory record, so that it emerged that the supposedly contradictory answers were <sup>not</sup> the answers of this witness at all but of some other witness.

The appellant's version was, briefly, that he heard the deceased use taunting language about his theft of the appellant's cattle. Being sore at heart he assaulted the deceased by pressing him down. He said that he was quite unaware that anyone had used a knife until they were all outside the bus. Only then he saw that the deceased had blood on him

and that Maphoto had a knife in his hands. The appellant was disbelieved principally because when he had sought bail he had made an affidavit which completely contradicted the evidence he gave in the trial. In his affidavit he had said that he and Maphoto charged at the deceased. The deceased took out a knife and after a struggle the appellant caused it to fall to the floor. The appellant (not Maphoto) then seized it and stabbed the deceased, who then confessed his sins, and later expired. We see no reason at all to disturb the Court a quo's finding on credibility.

On the other hand the Court believed the evidence of the Crown witnesses, and no sufficient basis has been put forward to disturb that finding. There were differences in their evidence, but mainly in the form of the differing observations and recollections of persons faced by a sudden disturbance. We accept, as did the trial Court, the essential points in the evidence of the Crown witnesses set out above.

Apart from criticising these witnesses the thrust of the argument for the appellant was that the existence of a common purpose on the part of the appellant had not been proved beyond a reasonable doubt. It was argued, and in principle this cannot be faulted, that the mere presence of the appellant next to the deceased and Maphoto outside the bus did not prove a common purpose. But that is not the end of the matter. On the appellant's own version he had a motive to attack the deceased, and he and Maphoto did assault him. His defence is based on his statement that he did not know that a knife would

be used. This comes strangely from a man who actually conceded that he took part in a homicidal attack, placing the fatal weapon in his own hand, though putting forward some form of self defence. The fact that there was blood on the deceased's seat shows that that is where the stabbing occurred. Then there is the evidence of the third Crown witness that the appellant and Maphoto carried the deceased out of the bus at a stage when he had already been stabbed. I find it impossible to believe that the appellant, being in such close contact with the deceased could have been unaware that he had been dealt a grievous and possibly a mortal blow. Thereafter he took no steps to disassociate himself from the attack, although he did not actively sustain it for as long as Maphoto did. Whether or not the trial Court was correct in its finding that it was the appellant who uttered the words "stab this person" seems to be neither here nor there. If he did not utter them he is at the least likely to have heard them. I am of the view that the trial Court was correct in finding that the appellant knowingly collaborated in a murderous assault. Accordingly, I am of the view that the appeal against the conviction should fail.

There was no appeal against the sentence.

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In my view the appeal fails.

Signed .....  
W.P. SCHUTZ  
President

I agree Signed .....  
M. Odes  
Judge of Appeal

I agree Signed .....  
S. Miller  
Judge of Appeal

Delivered at Maseru this 25<sup>th</sup> day of July, 1986

For the Appellant Mr Khaue

For the Respondent Mr T Sehlohlo