

IN THE HIGH COURT OF LESOTHO

In the matter of:

REX.

v

NTOETSE MOSOLA

J U D G M E N T

Delivered ex tempore by the Honourable Acting Judge,
Mr. Justice M.L. Lehohla, on the 5th day of August, 1986.

At the conclusion of the Crown case defence counsel applied for the discharge of the accused.

The Crown evidence has pointed out that accused is an epileptic.

The Court was informed by P.W.1 Dr. Mohapelo that accused has on occasions come before him for treatment of her epileptic fits.

At an earlier occasion this witness appeared before the magistrate who was conducting a Preliminary Examination. The witness submitted a report as to the accused's ability to stand trial. His conclusion following the examination conducted in that regard was that accused could stand trial.

Elaborating on probable consequences of an attack on the person who is a subject of epileptic fits, Dr. Mohapelo

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testified that such a person undergoes a series of convulsions followed by a deep sleep. A person under such seizure commits acts which he or she cannot recall. Mental confusion forms the pith and centre of the condition that a subject of such seizures undergoes. He or she has no control over his acts.

He concluded that it is possible therefore, in respect of the accused, that she could or did commit acts over which she had no control once the seizure occurred.

Talking in retrospect under cross-examination Dr. Mohapeloa pointed out that prior to treatment accused had had a history of being detained and treated for some abnormal behaviour.

In this regard he was corroborated by other Crown witnesses who testified that the abnormality in accused's behaviour usually manifests itself in acts of aggression especially against those trying to restrain her, otherwise she is given to stripping herself of her clothes and committing acts of verbal attacks.

As at the period spanning 1-2-85 and 25-3-85 P.W.1 registered 2 attacks of epileptic fits on accused.

As accused is undergoing treatment to remedy her condition P.W.1 has no knowledge of any subsequent confusion or relapse. Dr. Mohapeloa testified that for as long as

accused continues undergoing treatment and taking drugs prescribed, she cannot have any attacks of this disease.

Mr. Monyako raised the point and put it to Crown witnesses that at the time of the alleged incident notwithstanding that accused admitted to at least two of them that she had strangled her child and killed him, nobody bore witness to the act and that accused in any event is going to deny having uttered words to that effect. It is indeed a matter of fact that no Crown witness bore testimony to. I need hardly labour the question of the admissibility of the confession made by accused to P.W.3 who is a chief. For clearly if he is a gazetted chief, the confession made to him is not admissible in evidence unless it was referred before some proper authority who would deal with it according to law. This being the case what remains of the confession made to the other Crown witness, in whose hearing accused is alleged to have said she had strangled and killed her child, is uncorroborated and not safe to rely on in a serious charge such as this.

In any event it is only fair to assume in accused's favour that the chief is a recognisable chief in terms either of the statute or common law in which event a confession made before him would be inadmissible. This assumption follows on the Crown's failure to adduce evidence to the contrary.

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I accept also that mens rea has not been proved in this case so far. I also accept that the Crown has not adduced sufficient evidence to connect the accused with the fact of death of the deceased. Aside from some conflicting statements made by P.W.2 and 3 I find accused has no case to answer. Consequently accused is acquitted and discharged. My assessors agree.

M.L. LEHOHLA
ACTING JUDGE

11.8.86.

For Crown : Mr. Mokhobo

For Defence : Mr. Monyako