

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

v.

LEBOHANG KHOLORI

J U D G M E N T

Delivered by the Hon. Mr. Justice L.J. Khenla
on the 4th day of June, 1986

The accused, Lebohang Kholori, is charged with the crime of murder, it being alleged that upon or about the 3rd November, 1984 and at or near Siloe in the district of Mphahle's Hoek, he unlawfully and intentionally killed one Phafoli Nkone. To this charge the defence tendered a plea of guilty of culpable homicide and the Crown accepted the plea.

The Crown evidence is to the effect that on the 3rd November, 1984 the accused and the deceased met at a beer hall at about 10.00 a.m. and they drank beer together until 12 midday. When they left the beer hall they were both drunk. On the way the deceased asked the accused why he had assaulted his (accused's) wife because of the love affair he (deceased) had with the accused's wife. It was true that the accused had chastised his wife and warned her to refrain from having anything to do with the deceased. The deceased continued to ask the accused until they came near the home of 'Maletsatsi. The deceased asked 'Maletsatsi whether she

could allow him to pay her a visit. He further asked 'Maletsatsi to give him some beer. While the deceased was still talking to 'Maletsatsi the accused stabbed him with a knife. The deceased retreated and tried to pick up a stone but failed to do so. The accused picked up a stone and hit him on the leg. The deceased fell down and the accused stabbed him several times with a knife while he was still lying on the ground. After he had been stabbed several times the deceased rose and ran away but the accused chased him and stabbed him at the back several times. When they came to 'Mathabang's place the accused stopped stabbing the deceased and returned to 'Maletsatsi's place and took his hat and some cans of beer which he dropped when he first attacked the deceased.

The deceased died shortly after the assault. According to medical evidence his death was due to haemorrhagic shock caused by the cut on the carotid artery. There were several wounds on the chest and many wounds on the back.

There is no doubt in my mind that the deceased provoked the accused by referring to the chastisement of the wife of the accused when he knew that he was the cause of the trouble in that family. It is also common cause that the accused and the deceased were drunk. I agree with Miss Nku, counsel for the Crown, that the cumulative effect of drunkenness and provocation is to reduce murder to culpable homicide. (See sections 3 and 4 of the Criminal Law (Homicide Amendment) Proclamation No.42 of 1959).

Verdict: Guilty of culpable homicide.

Sentence:- Five (5) years' imprisonment of which three years' imprisonment is suspended for three (3) years on condition that

during the period of suspension the accused is not convicted of any offence involving violence to another person for which he is sentenced to a term of imprisonment not less than six (6) months without the option of a fine.

J. L. Kheola

J.L. KHEOLA

ACTING CHIEF JUSTICE.

4th June, 1986.

For Crown - Miss Nku
For Defence - Mr. Kambule.