

IN THE HIGH COURT OF LESOTHO

In the matter of:

REX

v

1. WHITE MAPOLANKA
2. SERAME MAHASA

JUDGMENT

Delivered by the Hon. Acting Mr. Justice
M. L. Lehohla on the 20th day of June 1986

On 20th June 1986 I made an order on review setting aside conviction and sentence in the above matter.

The Accused were charged with Culpable Homicide.

The evidence disclosed that P.W.1 'Malineo Mothabi was in love with deceased. She quarrelled with deceased. The deceased took umbrage at P.W. 1's termination of their love affair. He assaulted her. She ran away. Deceased chased her with a knife and a length of wire with which P.W. 1 feared he was going to stab her. The two accused came to her assistance as she was running across lots hotly pursued by the deceased. The two accused assaulted deceased with sticks. The latter later died as a result of injuries sustained during the assault with sticks.

Both Accused are P.W.1's sons. See page 6 of the record. It is not clear if they knew that P.W. 1 was in love with deceased. They are aged 24 and 28 years respectively.

I found that they were entitled to use force to repel imminent threat to their mother's life. Taking into account

/circumstances ...

circumstances disclosed in this case regard being had to the fact that it must have been a disgusting thing for them to see their mother put in peril of her life, a good amount of hot blood coupled with the heat of the moment (in the face of deceased's brazening it out in broad day light that he was chasing P.W.1 because of spurned love), must be given allowance for.

In questions put to P.W.1 by the accused it appeared that she could not deny that deceased threatened them with a knife when they were trying to stop him chasing P.W.1 This is a factor that cannot be ignored. Consequently I found that a case of private defence was well founded in respect of both accused for instance at page 12 of the record, to the question put by accused 2 "Will I be telling a lie to say I struck deceased because he wanted to stab me with a knife - ? I cannot deny, I was too far, I did not see," she replied.

Further at page 9 in answer to the question by Accused 1
" And deceased attempted to stab accused 2 with a knife and I struck him first - ? I cannot deny that."

The extent of injuries on deceased was not determined as no medical evidence was led. But my decision does not hinge on the absence of medical evidence. Sufficient disclosure of self-defence has been made to warrant an acquittal of both Accused. Conviction and the wholly suspended sentence are set aside.

In the result both Accused are acquitted and discharged.

M. L. LEHOHLA

ACTING JUDGE
20th June, 1986