

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

MACHAHA KOATLA

Held at Butha-Buthe

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 22nd day of August, 1989.

The accused now aged 20 years is charged with the murder of Kolomane Lehana, who died from a stab wound inflicted between his shoulders on 25th June 1987.

The accused pleaded guilty to the charge but a plea of not guilty was entered in order to enable the crown to discharge the onus of proving the crime committed beyond reasonable doubt. The charge is of murder.

The evidence of P.W.1 D/Sgt Mokoroane P.W.3 Dr. Oliver and P.W.8 Trooper Khobotlo at Preparatory Examination was read into the recording machine as it had been admitted for the defence and accepted by the crown. It has thus formed part of the record in these proceedings.

The crown led viva voce evidence of P.W.2 Sekerenchana Koto who testified that on the day in question he had been at

/at

at the shop of the accused's uncle.

He was persuaded despite his reluctance to accompany the accused and one Mokuoane to the home of a girl 'Masenono or Ntsoaki Lehana P.W.6 the grand-daughter of the deceased. The home is at Ha Nyenye.

The accused and his companions accordingly set out from 'Mathata for Ha Nyenye.

The purpose for the expedition as intimated by the accused to P.W.2 was in order to abduct P.W.6.

When they were about to reach the scene accused intimated that he would like Aupa to go and ask P.W.6 to come and see him. Aupa was not there. The task was assigned to George who obliged.

The accused and his company approached the corner of the yard enclosing deceased's house.

P.W.6 came out and reported to the deceased that there were some people outside.

At the time the accused was in the fourcourt of deceased's house.

The deceased came out and asked the accused who he was. The same question was put to the accused's companions but none vouchsafed him any reply.

P.W.2 Sekerenchane tried to reply but the accused stopped him saying he didn't want the deceased to recognise him.

The deceased expelled these young men from the vicinity of his yard.

Later the accused was identified through the thrust of light streaming from the door by P.W.6 when the accused was standing opposite the door

/inside

inside the deceased's yard.

It is common cause that deceased had a walking stick.

The accused having retreated to a place near but outside the gate intimated to P.W.2 that he was going to stab the deceased with a knife Ex."1".

P.W.2 wrested the unclasped knife from the accused's hand.

Shortly afterwards the accused struggled for possession of his knife from P.W.2 and P.W.2 surrendered it to him. P.W.2 testified that he formed the impression that the accused having clasped the knife, placed it in his pocket under his blanket.

Then P.W.2 betook himself from the scene when shortly afterwards the deceased approached the gate. When P.W.2 looked back he saw the accused extend his hand to the deceased who fell immediately afterwards.

P.W.2 conceded that in this court he said he did not see the accused extend the hand towards the deceased but that this is what he had said in the court below and swears that what he told that court is the correct version.

P.W.6 regarding the stabbing says that the deceased had just turned after closing the gate and was facing her when she saw the accused extend his hand towards the back of the deceased. The accused was behind the deceased.

The deceased came next to the door where he asked P.W.6 to support him.

She helped him to a chair inside the house. She had observed nothing in her attempt to find out what the matter was with the deceased when she examined him.

/She

She testified that the deceased fell when he was inside the house. To this extent her evidence is in sharp contrast with that of P.W.2 who said the deceased fell immediately after receiving what appeared to be a blow at the back from the accused.

It is common cause that the accused had taken beer that day. At least the crown evidence did not dispute this fact. The accused testified to what amounts to his advanced stage of drunkenness caused by his having indulged in drink since early that morning and topping up the earlier intake of beer by drinking two more quarts at 'Mantala's at Ha Nyenye, and buying two more before heading for the vicinity of the deceased's yard.

Facts are not in serious dispute in this case though the crown witnesses showed that the stabbing was effected on the deceased's back when he was facing away from the accused. The accused made a demonstration showing he was face to face with the deceased when he stabbed him with George standing between the two and facing the deceased.

The accused said the deceased had hit him with a cane stick at the back and felled him.

Intoxication if properly pleaded is a defence to a charge of murder. See S. vs. Ndlovu 1965(4) SA. at 695 C to E.

Where it is not pleaded the court can scarcely treat it as a defence on behalf of the accused person.

That is not to say where it features in evidence sufficiently to ground the fact that though the killing was intentional such drink did not affect the accused's perception as to reduce his moral blameworthiness.

What is clear is that at the time the accused inflicted the blow there was no danger posed by deceased

/to

to him. Consequently I find the accused guilty of murder with extenuating circumstances on account of the undisputed intake of liquor he had consumed.



J U D G E.

22nd August, 1989.

ON MITIGATION

I have heard your counsel's plea in mitigation which painted you a far more admirable person than you actually are.

It is granted that you pleaded guilty to murder. Often this is a sign that you are remorseful.

Attention has been drawn to your deportment in court. I have observed that you had your arms folded across your chest in the manner of humble monks.

It has been pleaded that you should be given lenient sentence. I have been told that your family have gone out of their way to palliate the hurt suffered by the deceased's family. That they offered a beast, a coffin and other necessaries for the burial of the deceased. They have also paid 4 head of cattle to raise deceased's head.

If there are any who deserved the favour of this Court it is your family.

As for you, while you may wish to enjoy these attributes by proxy, yet a brief history of how you went out of your way to pester 'Masenono and in turn her family including use of or threat of physical violence against her and her sister, one would be inclined to ask whether attributes ascribed to your family fit you as well.

A simple answer is that they sit ill on you.

It is to be regretted therefore that all in the name of propitiating the hurt suffered by the deceased's family culminating in the loss of their beloved caused by you should have been put to all that trouble when they are altogether innocent.

I have heard of meetings which were held between

/your

your family and the deceased concerning your misdeeds.

I think it is about time this Court showed that your misdemeanour cannot go without a curb.

Your family has suffered more than they deserve. It is time you shouldered consequences of your misdeeds.

The most lenient sentence I can impose is that of seven years' imprisonment.

My assessors agree.



J U D G E.

22nd August, 1989.

For Crown : Mr. Sakoane

For Defence : Mr. C.D. Molapo.