

IN THE HIGH COURT OF LESOTHO

In the Appeal of:-

KHOAOLLA LEBATLA

Appellant

VS

R E X

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola
on the 8th day of September, 1989

On the 21st September, 1987 the appellant appeared before the Subordinate Court of the district of Mokhotlong charged with culpable homicide in that upon or about the 21st day of March, 1987 and at or near Mashéaneng in the district of Mokhotlong, the appellant unlawfully assaulted Shili Lefasa and inflicted upon him certain injuries which caused the death of the said Shili Lefasa on the same day, and negligently killed the said Shili Lefasa.

The appellant pleaded guilty and after the public prosecutor had stated the facts of the case the appellant was found guilty as charged and sentenced to two (2) years' imprisonment. He is now appealing to this Court on the following grounds:

- "1. In the charge sheet the Crown has alleged negligence but failed to show such negligence in the outline of facts.
2. The accused as the first offender is praying the Honourable Court to consider an alternative of a fine.
3. The learned Magistrate disregarded the mitigation of the accused, which is supported by the outline of facts."

The facts of the case which were admitted by the appellant are clearly set out by the trial court as follows:

"Evidence would disclose that deceased was looking after accused's sheep. Accused and deceased were staying at a place called Mphokojoane. On 21st March, 1987 accused and deceased visited Koeneo Lebatla, accused's father at Masheaneng. On the day in question accused, deceased, accused's father and accused's mother went to the home of Talimo where there was Sesotho beer drinking. Deceased was armed with white "lebetlela" stick while accused was armed with a whip. Accused and deceased left the place of drinking first going to accused parental home. When they got home they stood at the forecourt. While they were still there accused's father approached and he heard accused saying deceased was disobeying him, but he did not hear any reply from the deceased. Accused's father then saw deceased hit accused with a fist on the face once and accused whipped deceased once with a sjambok. Deceased then walked a distance of about 4 paces from deceased. The stick (lebetlela) fell down, accused then

got hold of the stick, hit deceased with it once and deceased fell down. Accused's father intervened and assisted deceased to wake up but deceased failed. Koeneo raised an alarm but nobody came except accused's mother. After sometime Koeneo realised that deceased was dead. The matter was reported to the chief of the place. Accused and his father took the corpse into the house".

Mr. Lenono, the Crown Attorney, submitted that the appellant ought to have foreseen, as a reasonable man, that striking the deceased with a dangerous weapon, a "lebetlela" stick, on a delicate part of the body, the head, would cause serious injury, possibly resulting in death but was careless as to whether the eventuality occurred or not and the deceased certainly suffered mortal injury. He referred to the case of *Mohlalisi and others v. Rex*, 1981 (2) L.L.R. 394 in which it was held that it is not sufficient in order to prove culpable homicide to establish that death was caused in the course of an unlawful act. It is necessary in addition to establish that the appellant ought as a reasonable man to have foreseen the possibility of death.

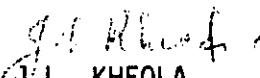
I agree with Mr. Lenono that as a reasonable man the appellant ought to have foreseen the possibility of death when he struck the deceased on the head with a stick. His act was unlawful because it cannot be said that he was defending himself. At that time the deceased had dropped the stick and was actually retreating and was about four paces from him. The deceased posed no danger to him because he was unarmed.

The appellant was negligent and I am of the opinion that he was properly convicted and the appeal against conviction is dismissed.

As far as sentence is concerned the trial court has given no reasons and this Court is at large to reconsider the sentence. The first thing to be taken into consideration is that the appellant is a first offender. He is a young man of about twenty-four years of age. The deceased and the appellant had been drinking Sesotho beer and his mind may have been affected to the extent that he easily became provoked. The deceased was the original aggressor but that did not justify the appellant's attack even after his life was no longer in any imminent danger.

It does not serve any good purpose to sentence a first offender to a long term of imprisonment unless he has committed a very serious offence such as murder or assault with aggravating circumstances. The circumstances of this case indicate nothing other than negligence on the part of the appellant.

The appeal against sentence succeeds to the extent that eighteen (18) months' imprisonment of the sentence imposed by the court a quo is suspended for three (3) years on condition that during the period of suspension the appellant shall not be convicted of any offence involving violence to another person committed during the period of suspension. The period of one month which he has already served before he was released on bail must be excluded.


J.L. KHEOLA
JUDGE

8th September, 1989.