

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

TSOENE TSOENE

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla  
on the 27th day of October, 1989.

You appeared before a second class magistrate charged with the crime of culpable homicide and the allegation was that you killed a man called Ngope Tsoeu on the 15th July 1988. You pleaded not guilty to that charge.

Your mother gave evidence before that court that you are her son, that on 15th of July 1988 she was at home in company of the deceased Letuka, who had come in asking for beer; and that when you arrived, she and he were just sitting down; and that you without any apparent cause just attacked Letuka and when she tried to intervene, you overpowered her.

She ran out to raise an alarm. She testified that the deceased was very drunk. You told me that you didn't hear that. She said that the deceased was about twenty years younger than she is. You also said that you didn't hear this. You say this accounts for your failure to cross-examine her on these matters. But what appeared to have been

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your defence from the line of your cross-examining her was that you had been provoked, for according to your questions put to P.W.1 your mother, you said you found this man in bed with her.

Apart from the fact that your mother denied that this was the case, people who came immediately after she had raised an alarm looked at the bed and found that there was nothing untoward about it, it didn't look to have been slept in and there is no suggestion that she came in the interval between your own departure and subsequent re-entry into the house to make up that bed. There is no suggestion to that whatsoever.

So the evidence was properly founded which said the bed looked as if it was going to be slept in. Apart from these two things which I have brought to your attention, you had no business whatsoever to interfere in your mother's private affairs; that's even assuming she was in love with the deceased.

The savagery with which you unleached this attack on an unarmed man on all accounts necessitates an appreciably enhanced sentence. After the event you didn't even as much as try to take the deceased for medical attention. In fact you had expressed the most negative attitude to that when the chief asked you to take him for nursing care or medical attention. You told him that the man would rise on his own accord from where he had fallen. The type of weapons you used, in fact this iron rod and the stick and the part of the body to which you directed your blows clearly indicated that you were intent on finishing this poor man. The learned crown counsel shows that you should have been charged with murder instead of culpable homicide. I agree with him.

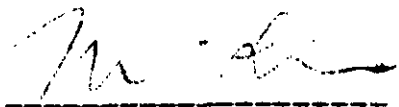
Witnesses testified that the deceased had his blanket on, tied to him with a pin and that he also had his shoes on. The suggestion you made through your cross-examination that he attacked you with an iron rod falls away because there is no how a man could be in bed

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wearing shoes and having his blanket tied on with a pin and also holding an iron rod and simultaneously having sex with your mother.

When this matter came before me on review I asked that you be told to say why, in the event that your conviction is confirmed by this Court the sentence should not be enhanced. I heard your submissions to that end. But I have come to the conclusion that as I confirm the conviction the sentence imposed by the court below should be set aside on grounds of manifest inadequacy.

In the circumstances therefore I find that the least possible sentence I ought to impose should be of (8) eight years' imprisonment.



J U D G E.

27th October, 1989.

For Crown : Mr. Thetsane  
For Defence: In Person.