CRI/T/52/88

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

THABO MOOROSI

Held at Quthing

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 6th day of March, 1989.

The only oral evidence that the Court heard in this trial is that of P.W.2 Tlala Sokamisa. The rest of the evidence was admitted in the form of witnesses' depositions led at preparatory examination. These depositions were read into the recording machine and thus made part of the record in the instant proceedings.

The tenor of this evidence is to the effect that there was beer drinking at the home of Nkolanyane in January 1987. The merry-making went on until well after twelve midnight, when accused had a quarrel with one 'Malimakatso. With the aid of some of the merry-makers who intervened the quarrel was brought to an end.

Events however took a new turn when accused was heard asking deceased why he hit him. P.W.1 Leohesa, who according to accused was only two paces away from him, testified at P.E. that he did not see deceased assaulting accused. In fact P.W.1 took accused outside the house, while deceased was left inside. Deceased came following. P.W.1 saw accused hit deceased twice with a stick. The stick got broken whereupon accused

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took a tripod and hit deceased with it. P.W.1's attempts at intervening were foiled by accused who overpowered him.

Accused belaboured deceased and afterwards left the place. An alarm had been raised and many people came to the scene. These are people whom P.W.1 met while he was following accused who had just decamped. P.W.1 then returned with the vast concourse of people who had responded to the alarm by heading for the scene of the incident.

They found deceased already dead. It is in respect of this death that accused Thabo Moorosi today stands charged with unlawful and intentional killing of the deceased Tseko Lebetsa. The death is said to have occurred on 10th January 1987. Accused pleaded not guilty.

P.W.2 Tlala Sokamisa who gave evidence before this Court supports P.W.1's evidence but it is strange that while he came to the scene in response to an alarm he had received from a small boy Tolo or Poli Lebetsa his perception of events differs from that of P.W.1.

P.W.2 said when he came he found accused outside the house seated and holding a stick and a stone. He saw these objects because there was bright moonlight and in any event he came close to where accused was seated. P.W.2 went past and got into the house where he found deceased sitting on a chair in the company of others including one Maletuka. P.W.2 asked him what the matter was but deceased said he did not know.

Then deceased tried to go out but was prevented by this witness from doing so. P.W.2 went outside and tried to grab hold of accused with the intention of dragging him from the scene but accused defied all such attempts. Shortly before this accused had asked P.W.2 to light him up and P.W.2 did so by striking a match whereupon he noticed a small scratch on accused's forehead.

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Then Maletuka came out and posed certain questions concerning Lechesa.

Deceased was about to go out when he was struck with a stone by accused in consequence of which deceased stopped in his tracks and fell with his face landing on the door-step. It is strange that P.W.1 made no mention of this aspect of the matter yet he was so closely associated with the events in which he participated so prominently by taking accused outside the house.

However it is P.W.2's testimony that accused then rushed at deceased and belaboured him with the stick he was holding.

Medical evidence shows that death was caused by damage to the brain. In the doctor's opinion deceased was hit with a sharp instrument like an axe or a sword. P.W.2 explained to the court the tripod he saw in the scene of the incident. He described it as a three-legged structure made of pieces of iron droppers used in constructing fences. It is common knowledge that tripods are used for supporting pots over burning fire.

I have no doubt that the edges of these fencing droppers can inflict injuries which are indistinct from those caused by the instruments the doctor suspected were used in the assault.

The medical report furnished me with the information that the skin covering the skull was cut by a sharp object and that 5 cm long cuts were seen underneath the scalp. The skull was pierced resuling in several deep holes in the brain. There were multiple fractures of the skull and the brain was subsequently damaged in several parts.

The Crown submitted that the posture of events revealed by the evidence should lead the Court to no other conclusion than that accused in inflicting the injuries referred to above had the requisite intent to murder the deceased. Further that even though he

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appreciated that causing these injuries might result in deceased's death he nonetheless was reckless as to whether death resulted or not. Mr. Moorosi countered by submitting that regard being had to the beer accused had taken it cannot be said he had the requisite intent or the appreciation of consequences of his act. I am persuaded in favour of the view that drunkenness cannot in the circumstances of this case be accepted as a defence.

It is regrettable that none of the weapons used in assaulting deceased were produced in Court.

Accused's story was a pitiable tissue of lies. I put no reliance on it. He denies the crucial point that he was seen inflicting the injuries with a stick, a stone and a tripod on the deceased. He suggests that the injuries found on the deceased's body could be accounted for by people who either remained on or came to the scene after he left for the chief's place.

I am unable to accept the suggestion that accused had been provoked by the fact that he was made to walk in the rain carrying a kitchen rack or unit by deceased. The fact that he got wet when the rack tilted and thus emptying on him rain water which had collected in its compartments cannot justify his brutal attack on the deceased. Accused behaved in a despicable manner towards almost everybody with whom he came into contact that day.

I am without doubt that in line with S. vs. Mini 1963(3) SA. 188 at 192.

> "....... A person in law intends to kill if he deliberately does an act which he in fact appreciates might result in the death of another and he acts recklesssly as to whether death results or not,"

accused is guilty of murder as charged.

My assessors agree.

J U D G E.
6th March, 1989.

EXTENUATING CIRCUMSTANCES

As accused is found guilty of murder founded on the type of intent commonly known as dolus eventualis, coupled with the facts revealed in evidence that there was intake of liquor, I am persuaded to the view that extenuating circumstances do exist in this case. These are factors that the Court takes into account relating to the moral blameworthiness of the accused person. The beneficial effect of these is to save accused's neck from the ultimate penalty.

Sentence: Sentenced to 6½ years' imprisonment.

JUDGE.

6th March, 1989.

For Crown : Mr. Thetsane
For Defence : Mr. Moorosi.