

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

TEPA MAFASANE
LEPHALLO MOTSELELI

Held at Quthing

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 9th day of March, 1989.

The accused changed their pleas from not guilty to the crime of murder of one Tseko Matibi to that of guilty to a lesser charge. Crown accepted the pleas. There was beer drinking at Makhetsi Paroto's place on 3-3-88.

At that beer drinking session P.W.3 'Malephethetsa Posholi was present.

Deceased had a quarrel with P.W.1 Tebello Motselleli. The two accused intervened. But P.W.3 could not say how the fight started. She only saw when P.W.1 and deceased were lying on the ground. Actually P.W.1 was unconscious.

The two accused were seen belabouring deceased who was already down. P.W.3 tried to intervene but in vain.

The two accused had been drinking beer that day. The accused felt offended when their brother was assaulted for they were related.

/Death

Death resulted from cerebral death due to brain swelling. The accused conveyed deceased to the clinic. He was transferred to the hospital where he later died.

The accused having confirmed outline of the facts are convicted of culpable homicide on their own pleas.

Verdict : Both accused are found guilty of culpable homicide.

Crown : The accused have no previous convictions.

Mitigation of Sentence :

Accused were intoxicated. When coming to their senses they attempted to take deceased to clinic. Their unpremeditated acts were precipitated by the attack by deceased on P.W.1.

Accused were granted bail after four months in detention. Both are married. They have children. Court should have regard to the fact that they pleaded guilty and did not waste its time except when considering their individual plight. They will also be required to raise deceased's head according to custom.

Sentence : Each accused is sentenced to pay a fine of two thousand Maluti or serve five years' imprisonment of which half will be suspended for three years on condition that the individual accused is not convicted of an offence involving violence to the person of another committed during the period of the suspension.

J U D G E.

9th March, 1989.

For Crown : Mr. Sakoane.

For Defence : Mr. Moorosi.