

IN THE HIGH COURT OF LESOTHO

In the appeal of:-

'MANTHABISENG RHOZHANE.....Appellant

VS

R E X

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola  
on the 16th day of June, 1989

The appeal has already been allowed and what follows are the reasons for that decision.

The appellant was charged before the Subordinate Court of First Class for the district of Maseru with the offence of culpable homicide, it being alleged that on the 27th day of April, 1987 at or near Meeting Post in the district of Maseru, the said accused did wrongfully and unlawfully administer or inject in deceased's vagina a certain concentrated mixture of five roses tea, red pepper, bicarbonate of soda and lifebuoy soap, which said

concentrated mixture caused the death of the said Agnes Sepitika on the 27th day of April, 1987 and the said accused thereby negligently killed the said Agnes Sepitika and committed the crime of culpable homicide.

The facts of the case were that on the 24th April, 1987 the deceased went to the home of the appellant and informed her that she was pregnant. She asked the appellant to help her commit an abortion. The appellant agreed and made two mixtures of substances described above. She made her drink some of the mixture and injected some into her vagina. Immediately after the administration of the mixtures the deceased informed the appellant that she was unable to walk. After a long time she felt better and walked back to N.T.T.C. where she was a student. On the following day she informed her friends that the treatment had failed to cause an abortion and that she intended to go back to the appellant for further treatment. She apparently went there on the 25th April, 1987 and on this occasion her friends did not accompany her.

The appellant testified that when the deceased came to her and asked her to administer the mixture again, she refused and left her in her house because she was going to town. When she returned to her house she found that the deceased had already died and was lying in her house. She noticed that the syringe and a bucket were near her. The appellant realized that the deceased had apparently injected the mixture into her vagina herself during her (appellant's) absence. She became very frightened and decided to get rid of the body by secretly burying it in latrine pit. Although

the people who live in the same yard noticed that she was busy at the latrine pit, they did not realize that she was burying a dead body.

After her arrest the appellant led the police to the latrine and the dead body was found.

The doctor who performed a post-mortem examination upon the dead body was unable to ascertain the cause of death. There were no external injuries, there were signs of vaginal bleeding. She was pregnant and the female foetus was about 33.5c.m. long from the crown to the ankle and was twenty weeks old. There was foul smelling material in the oral cavity. The doctor sent the stomach, section of the lung and the liver for further examination but received no report. She could not rule out the possibility of poisoning.

In a case of culpable homicide the Crown must prove beyond a reasonable doubt that the act of the accused person was the cause of the death of the deceased. In the present case the Crown has failed to do so. The doctor was unable to establish the cause of death. The mixtures that the deceased was made to drink were not poisonous, and the mixture that was injected into her vagina apparently never entered into the uterus because the doctor makes no reference to it.

It is standard practice in cases of this nature for the Crown to charge the accused with the more serious crime of culpable homicide and with abortion in the alternative. Hunt: (South African

Criminal Law and Procedure, 1st edition, page 307). If the Crown had followed that procedure the appellant could have been found guilty of attempted abortion in terms of the decision in R. v. Davis 1956 (3) S.A. 52 (A.D.). In that case it was held that all cases of procuring abortion are treated as attempts where an endeavour, going beyond preparation, has been made to procure abortion, whether or not the woman was pregnant, the foetus alive or the means capable of achieving the purpose aimed at.

The trial court came to the conclusion that the deceased died as a result of the injection of the aforesaid mixture. Its conclusion is not supported by the evidence of the doctor who performed the post-mortem examination. The truth of the matter is that the Crown failed to prove the cause of death.

In the result the appeal was upheld.

J.L. KHEOLA  
JUDGE

18th July, 1989.

For the Appellant - Mr. Khaue  
For the Crown - Mr. Qhomane.