

CRI/T/51/90

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

MAPESHOANE HLOAI

HELD AT QUTHING

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla on  
the 10th day of December, 1990  
-----

The accused stands charged with the murder of his wife 'Mathuso Hloai who died on the 12th August 1989 at a place called Mantsonyane in the Mphahle's Hoek district. The accused pleaded not guilty to the charge. The evidence adduced on behalf of the Crown spanning P.W.1 Lira Morajane to P.W.5 No. 365 Trooper Moletsane, was entirely admitted on behalf of the accused, and was accepted by the Crown and read and recorded.

It appears that on the fateful day there had been drinking at a place somewhere in the village. The accused was with his wife at this place. The accused is shown to have left a little earlier than his wife, and some five to seven minutes later the wife also left.

However, Lira Morajane said that the accused immediately came back to make a report to him. The two left for the scene where they found the accused's wife

/lying

lying on her back, some two paces away from P.W.1's fence. P.W.1 asked the accused what had happened to the wife. The accused told him that he had hit her with a stone. Thereupon P.W.1 raised an alarm. Blood foams were seen on the nostrils and mouth of the deceased. The body was carried on a ladder and taken to the Mohale's Hoek mortuary.

The doctor's evidence is very inconclusive as to what the cause of death was. He is doubtful whether the injury was sustained on the head. In the result, all that we can rely on is the accused's admitted evidence that the injury was caused on the head with a stone. Medical evidence in the Preparatory Examination depositions shows that the doctor formed the opinion that the deceased died from natural causes. I may point out here that the Court is not obliged to follow, or bound by medical evidence provided that there is other evidence alliunde showing what the cause of death might have been.

However, except the evidence that was admitted as to what possibly could have been the cause of death, there is not scientific cause of death established. It being in the nature of preparatory examination depositions the Court is deprived at this moment of the oral evidence of the doctor who might have been asked in this Court as to what he attributed the flow and foaming of blood from nostrils and mouth to. However the Court has had the benefit of addresses at the end of the admitted evidence.

Be it noted also, I think it is important, that immediately after the conclusion of the Crown case the defence closed its case without leading the evidence of the accused. In its concluding addresses, the Crown conceded that the medical evidence is scanty as to the cause of death.

The Crown accordingly, and I think rightly too, submitted that at worst the charge that can stand against the accused is that of Assault with intent to do Grievous Bodily Harm as shown in the evidence.

/Accordingly

Accordingly you are found guilty of Common Assault instead of assault with intent to do grievous bodily harm. This conclusion is reached in view of the fact that the doctor says your wife died from natural causes. Although the assault that you admitted was effected on the head the doctor's opinion is that it played no part in promoting the death of the deceased.

You are therefore sentenced to two years' imprisonment the whole of which is suspended for three years on condition that you be not convicted of an offence committed during the period of suspension of which violence is an element.

J U D G E

10th December, 1990

For Crown : Mr. Mokhobo

For Defence: Mr. Fosa