CRI/T/38/90

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

MOTLATSI MASOETSA

HELD AT QUTHING

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla on the 11th day of December, 1990

The accused was indicted before this Court on a charge of Murder of one Macosonke Mok'hompe who died on the 8th of June 1989 at Tiping in the Quthing district at a place called Mphaki.

The accused to start with had pleaded guilty to Culpable Homicide a competent verdict to the charge of Murder. The Crown rejected his offer of plea to Culpable Homicide. In the admissions proposed on his behalf, the accused admitted the evidence of P.W.8, Dr. Voëlkein. The Crown accepted this admission, The evidence of that doctor was accordingly read into the recording machine and made part of these proceedings. The doctor had indicated that he examined the dead body of the deceased on the 12th June 1989. He found that the wounds were caused by a blunt instrument used with

/considerable

considerable force. He based his belief that considerable force had been used on the fact that there was an extensive fracture of the skull.

The Crown then led oral evidence of the balance of the Crown witnesses who had given evidence at the Preparatory Examination. In brief, their evidence is as follows : The chieftainess of the area 'Mamoeloketo Nkuebe had ordered her subjects or some of her subjects including her bugle P.W.2, Lichabalikae Ntai, to go and impound stock which was grazing on reserved pastures. The subjects duly complied. But along the way to chief Mosiuoa's place driving these cattle, donkies, sheep and whatever, P.W.2 happened to be at the head of the stock that was being driven there; especially horses which were rather unruly and restive and therefore running around far ahead of the stock which was coming behind him. It was while he was at the head of this group that he saw the accused some 250 paces away, and he says he recognised him because not only that they are related but because he recognised the horse, the chestnut horse, he was riding on. He also identified him by the manner of his apparel, by the manner of his dress, the blankets he was wearing. He had no difficulty, he told me, in recognising the accused.

The accused was headed in the opposite direction to where the group driving these impounded stock were heading. P.W.2 had, during the course of his evidence, told the Court that there was among people who were driving these impounded stock an old man -the deceased in this case. The deceased was on foot while the rest of the young men were riding on horseback including P.W.2; the deceased came slogging along slowly behind the group who were driving the impounded stock. No doubt tiredness plus his age having caught up with him it was no surprise, therefore, that he took a rather unduly long time before emerging from the neck which P.W.2 thought he should have made by that time. P.W.2 got anxious and suggested that people should go looking for the deceased.

/He

He told me that he was made even the more anxious by the fact that he had seen the accused riding rather hard in the direction of the place where the deceased was supposed to come and emerge from. No doubt he was further buttressed in his fear for the life of the deceased by the fact that and knowledge that among the stock impounded were the accused's.

The request was duly complied with and a group of young men were sent to go and look for the deceased. The most impressive of the evidence given by these witnesses who went there was that of P.W.4, Thabo Morai. It corroborates and supports that of his mates that is of P.W.1, Lebuang Ntai, P.W.3, Mohlolo Ntakatsana's; in brief it is as follows : Having been given an instruction by the chief to go on looking for the deceased they rode hard towards the neck where they were expecting the deceased to have emerged from. When they emerged they did observe some 100 paces away from the neck, that the accused was belabouring the deceased with a stick. The accused was facing the direction of the neck - the accused said he was not facing the neck - he nonetheless heard these witnesses say that he was doing so but did not bother to cross-examine them on their version of events which in his view was an obvious lie even if it is in contradiction of his own story. However, on seeing them approach, the accused got on to his horse and fled. They rushed to the scene, found the deceased who was speaking but only barely so. The deceased told them that the accused, calling him by name Motlatsi Masoetsa, had finished him. Even as he was speaking he was showing them the injuries which were obvious on the head, and along the deceased's rib region. They helped him along. - To go slightly back - These Crown witnesses' evidence is somewhat discrepant as to the actual position in which the deceased was when they first saw him. In the Preparatory Examination P.W.1 had said that the deceased had tried to rise when they came to him but he

/staggered

staggered and fell. The same was said by P.W.3 at the preparatory examination. But in this Court both of them said that the deceased had remained prostrate throughout; and only moved from there when they were carrying him to a horse which they took to convey him to the chief's place. However, to his credit P.W.1 realising that the events at the scene were closer to the time when he gave evidence at the preparatory examination than the events today when he is giving oral evidence before this Court; was quick to say that the true position was as reflected in the preparatory examination. However P.W.3's evidence was different on the issue. He insisted that what he told this Court was the actual position. But somewhere along the course of his evidence he did contradict himself even in this Court on that issue. As if that was not enough he contradicted even the contradiction he had given in this Court. Consequently the machine was played back; and confronted with the unerring piece of invention consisting in the type of the machinery that we have here, he was clearly in a cleft stick and therefore he said he agreed with what P.W.1 had said.

The evidence that remained consistent throughout, not only in the court below, but in this Court also, was that of P.W.4. He told me that, when they came to the deceased, the deceased tried to rise but he staggered and when he was about to fall they supported him and gave him assistance. The deceased had shown them and he observed the wounds where he complained the accused had assaulted him. He supported the story related by his mates, namely, that when they surfaced to the neck, they saw the accused repeatedly hitting the deceased along the upper part of the deceased's body. Much was made of the number of blows that were delivered. But regard being had to the fact that the deceased was dressed, not all the blows which were delivered on his body could have left any marks.

The evidence of the doctor who performed the post-mortem makes the number of the injuries as at least four

/serious

serious injuries.

There is, however, an unfortunate thing regarding the strict adherence to protocol in the villages in this country. P.W.2 who struck me as a man of affairs at whose instance and initiative help was quickly availed to the deceased did nothing for a whole 24 hours of the deceased's arrival at the place of the chief from 9.00 o'clock until the following day. The fact that the deceased did show signs of life even immediately after he had been struck and some 24 hours after he had spent the night at the chief's place without any medical attention is a sure sign that if, in fact, he had been rushed to places where he could get relief in time he probably would still be alive to day perhaps. But strict adherence to protocols stood in the way of all these attempts at saving the deceased's life. After a message had been sent to Chief Mosiuoa about the condition in which the deceased was the latter in turn sent a message to inform a superior chief. No doubt, at the time when all this was being done the deceased's life was ebbing away at a fast rate. That was just an aside.

The crux of the matter in this case is that it appears that the deceased was going about his duties and carrying out his lawful functions of obeying lawful authority in joining the men who were told to go and impound the stock which had trespassed in the reserved pastures. The accused took advantage of the fact that because of his old age and the fact that he was lagging behind he should go and wreak his anger, if there was any such, on him.

It is significant that in this Court the acused who had sworn to tell me the truth, told me that he had hit the deceased because the deceased insulted him by saying "Mosono ka nyoko" to him. Apparently when saying this, the accused had forgotten the fact that in his application for bail he had sworn an Affidavit in which he had said he had hit the deceased because the deceased had joined a group of

/men

men who were driving his cattle or interferring with his cattle. What remains when all is said and done is that no how if either of these two versions was true could a man, who acted the way the accused did, forget the reason why he had assaulted another to death. In the circumstances the accused is clearly in a cleft stick. Neither is it true that the deceased insulted him as a result of which he attacked him nor the fact that the deceased had driven his cattle; moreso because he was not driving any at the moment; if there were any people who were responsible for driving cattle, these were the young men who were riding on horse-back, whom the accused, no douht, felt he would not match. Hence his decision to make quick work of the fossil that had remained behind. He also made mention, in his evidence, of the fact that he had committed this act because one of his herdboys had been assaulted the previous day at the cattle-post. Significantly, he conceded that the deceased was not one of the people who had hit his herdboy. It would appear, therefore, that for no good reason whatsoever, the accused belaboured as the Crown witnesses said the poor fossil. Even if he felt justified in being angry that his cattle had been impounded, surely, the best person to have gone to register his protest to was the man from whom the instruction to impound them emanated. But in the scheme of the accused's doing things he felt that the weakest must go to the proverbial wall.

From the nature of the injuries inflicted and the conduct of the accused after he had inflicted those injuries, namely, that he betook himself from the scene, scarcely taking care to see whether the deceased didn't require immediate help, it is clear to me that the act was committed with intent. On his part the accused told the Court that by leaving the deceased, so to speak, in the lurch he was showing remorse. One would quickly liken the type of remorse that he is talking about to the tears of a crocodile which flow when it is eating up somebody. I reject that explantion of his with contempt.

The accused is convicted, therefore, of Murder as charged.

My assessors agree.

J U D G E
11th December, 1990

EXTENUATING CIRCUMSTANCES

In an attempt by your counsel to pursuade the Court of the existence or otherwise of the extenuating circumstances he addressed the following to the Court.

That you did show your remorsefulness by pleading guilty when the charge was first put to you and that your plea to Culpable Homicide was rejected by the Crown thus it was not really your fault that the case took this long. Further that the interval between the assaults and the deceased's death was so long that if he had received medical attention on time he would have survived.

My view is that the last of the above grounds would have had some merit if the accused had been seen doing something towards alleviating the deceased's condition instead of abandoning him and leaving him to the tender mercies of the elements and animals of prey in the veld.

I take the first of the grounds advanced as constituting extenuating circumstances.

M I T I G A T I O N : Having considered pleas in mitigation on behalf of the accused I have come to the conclusion that 14 years' imprisonment would meet the justice of this case. It is so ordered.

My assessors agree.

J U D G E
11th December, 1990

For Crown : Mr. Qhomane
For Defence: Mr. Matooane