

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

LEFA MAKHETHA

HELD AT QUTHING

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 13th day of December, 1990

The accused was charged with the crime of Murder in that on 30th day of April 1989 at a place called Ha Thaba Bosiu in the Mohale's Hoek district he had unlawfully and intentionally killed one Limakatso Matsoso.

The Crown dispensed here with the evidence of two witnesses namely P.W.4 Matseliso Leeba and that of P.W.5 'Manthabiseng Ramaili. The accepted admissions on behalf of the accused were P.W.6 Matlere Matsoso and that of P.W.7 Dr. Shaikh.

The Crown led the first and only evidence of P.W.3 Trooper Lethoko who told the Court that on the 1st of May 1989 while still at his station at Mohale's Hoek he had cause to proceed to the scene after receiving a report of the dead body of a female. The body was lying between the houses of one 'Manthabiseng Ramaili. This witness observed one wound on the head of the deceased. In the cause of his

/investigations

investigations he had cause to introduce and identify himself to the accused. And he told me that he gave the accused caution. Asked to elaborate on the caution that he gave, he told the Court that he produced an Identity Card and warned the accused that he was investigating the death of the deceased. Whereupon the accused gave him some explanations and the explanations led to the accused leading him to the accused's residence where a stick was pointed out, and from there the dead body was collected and the accused was conveyed in the same vehicle as the deceased. The body was deposited at the mortuary and the accused was led to the police station. It is at this juncture that P.W.1 told me that he warned the accused that he was not obliged to make any statement and that should ~~it~~ he make it he should know that it would be used in the case against him.

From the evidence given, it doesn't appear that any more thing was revealed which might incriminate the accused after this warning that was given at the Charge Office. At this juncture one wonders what now was the use of this caution that was given at the Charge Office.

The exhibit is before Court, it was retrieved before the caution was given that the accused was ^{embellished} made to remain silent. It would seem therefore logical that the accused was taken advantage of, his rights were trampled on. Caution / constitutes what are termed the Judges' rules, and these are administrative rules of procedure which have to be observed during investigations. Indeed there is a body of authority to the effect/^{that} these rules are mere administrative rules of procedure and don't have the essential force of law. But their basis is towards achieving fairness in a trial between the two parties which appear before Court. It is indeed on account of the body of the authority that I have referred to that time and again Judges bend backward to ensure that justice is nonetheless achieved even at the expense, or sometimes, of some of these procedural rules. But in this particular case it appears that the extent to which the

/accused's

accused's rights have been trampled on no Court can connive at it.

Through questions put to P.W.3 it was suggested that the accused was molested while in custody. That has got no substance whatsoever and I reject it. There would be no reason why, after the accused had already produced the most essential part of the evidence in the Crown case he could afterwards be molested. This would, if the case were to go on strengthen the case for the Crown if this particular line that was being proposed was followed. For indeed if the accused were to be proved a liar beyond reasonable doubt an inference of guilt would follow. It is on this technical ground of police faulty investigation therefore and not because the accused is not liable for the killing of the deceased that he is acquitted and discharged.

J U D G E

13th December, 1990

For Crown: Mr. Mokhobo

For Defence: Mr. Fosa