

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

TUBATSI 'MUSO

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 12th day of February, 1990.

Held at Butha-Buthe.

This is a summary trial in which the accused is charged with a double murder, it being alleged that on or about 12th December, 1987 and at or near Ha Seshote in the district of Leribe he unlawfully and intentionally killed 'Mamoretele Melida 'Muso and Samson Ralikeleli 'Muso.

The problem I experienced in this case was that no Preparatory Examination had been held. The judge's file contained only the Psychiatrist's report indicating that the accused is mentally deranged and incapable of following the court proceedings. For this reason I ordered that evidence be adduced so as to enlighten the court whether or not the accused had in fact committed the offence against which he stood charged.

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Briefly, the evidence was to the effect that prior to 12th December, 1987 the accused's wife went to her maiden home. The accused remained with the two deceased persons who were his own children aged 7 and 5 years. In the early morning of the day in question, 12th December, 1987, the bodies of the deceased were found outside the accused's house. Both deceased had their throats cut and the corpses were covered with blankets belonging to the accused person. When he was asked what had happened to his children, the accused kept on saying "I say these children should be burried".

The accused was arrested and subsequently charged as aforementioned. Although there is no direct evidence that the accused killed the deceased persons, there is, in my view, ample circumstantial evidence indicating that the accused did so. He was the only person staying with the little children in the house; the children were found with their throats cut just outside the accused's house. and their dead bodies were covered with the accused's own blankets. Indeed, the accused never reported the death of the children to anybody and when he was questioned about it he merely contended himself with "I say the children should be burried."

As I have pointed out earlier, there is a medical report in the file indicating that the accused is insane. He could not, therefore, plead to the charge or understand the proceedings. Indeed, I have been looking at him while he was sitting in the court. All the time he was looking up in the sky. He did not seem to have the least interest

in what was going on before the court. I entirely agreed with the medical report that because of insanity the accused could not understand the court proceedings. There was no need, therefore, to ask him to plead to the charge against which he stood charged before the court.

Section 172(1) of Criminal Procedure and Evidence Act 1981 provides that where it is clear that the accused cannot understand the proceedings, the court shall enquire into the question of his insanity. As it has already been pointed out, in this case there is a medical report indicating that the accused has already been observed by a mental doctor and according to the report, the accused is insane. There is, therefore, no need to make an inquiry on the question of the accused's sanity.

Having satisfied myself that the accused is an insane person S.172(2) of the Criminal Procedure and Evidence Act, 1981 enjoins me to commit him to prison pending the signification of his Majesty, the King.

On the authority of the provision of S.172(2) of the Criminal Procedure and Evidence Act 1981, I accordingly commit the accused to prison pending the signification of his Majesty, the King.

My assessprs agree.

B.K. MOLAI

JUDGE

12th February, 1990.

For Crown : Mr. Mokhobo

For Defence : Mr. Klass.