

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

v

PHONDO KHESUOE

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

The accused person is before me on a charge of murder, it being alleged that on or about the 10th day of August, 1988 and at or near Thabang in the district of Mokhotlong he unlawfully and intentionally killed one Thabang Mfundisi.

When the charge was put to him, the accused, who is represented by Mr. Fosa in this case, pleaded guilty to culpable homicide. Mr. Mokhobo for the Crown, accepted the plea of guilty to culpable homicide tendered by the accused person.

Section 240 (1)(a) of the Criminal Procedure and Evidence Act, 1981 provides:

"240 (1) If a person charged with any offence before any court pleads guilty to that offence or to an offence of which he might be found guilty on that charge, and the prosecutor accepts that plea the court may -

(a) If it is the High Court, and the person has pleaded guilty to any

2/ offence

offence other than murder, bring in a verdict without hearing any evidence;"

As it has already been indicated, the accused who is represented by a lawyer has pleaded guilty to culpable Homicide which is an offence of which he may be convicted on a charge of murder. The Crown has accepted the plea of guilty to culpable Homicide tendered by the accused person. In terms of the provisions of the above cited Section 240 (1)(a) of the Criminal Procedure and Evidence Act, 1981, I would, therefore, convict the accused of culpable Homicide in accordance with his own plea.

Both my assessors agree.


SENTENCE : Coming now to accused's sentence, the court has been invited to consider a number of factors in mitigation. They have been eloquently tabulated by the defence counsel and there is no need for me to go over them again. Suffice it to say, in addition I take into account the fact that in accordance with our custom, the deceased's relatives will, in all probabilities, sue the accused civilly to raise his head. In other words, this court is only the first to punish the accused person. There is still a civil court before which he is likely to appear for yet another punishment. To avoid the accusation that the courts of law punish a person twice for the same offence, I want to make it clear that in imposing the sentence I am going to impose on the accused I have taken into account the fact that there is yet another court which will, in all probabilities, punish him.

3/I am also concerned

I am also concerned about what I have been told in mitigation viz. that the relatives of the deceased want to retaliate on the accused person. Assuming the correctness of this, I am of the opinion that there is the need to keep the accused away from the relatives of the deceased with the hope that by the time he returns to their midst their tempers will have subsided.

Having considered on behalf of the accused person, all these factors I am, however, not prepared to turn a blind eye to the offence with which he has been convicted. It is a serious offence calling for a commensurately serious punishment - A punishment that will deter the accused and serve as a reminder to people of his mind that the courts of law do not encourage people to take the law into their own hands. I am saying this mindful of what I have been told viz. that the accused acted in self-defence. I agree that the accused may have initially tried to defend a woman who was apparently being molested by the deceased. However, it seems the accused got a chance to leave the deceased and went to his house from where he returned armed with a knife with which he stabbed him. When he thus returned from his house and stabbed the deceased, the accused was the aggressor and, in my view, self-defence could not avail him.

By and large, I come to the conclusion that the appropriate sentence for the accused person would be four (4) years imprisonment. I accordingly sentence him.



B.K. MOLAI
JUDGE.

12th February, 1990.

For Crown : Mr. Mokhobo

For Defence: Mr. Fosa.