CRI/T/67/89

IN THE HIGH COURT OF LESOTHO

In the Matter of:

R E X

vs.

SANONO RALESHOAI & 2 OTHERS

# J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 16th day of February, 1990.

The three accused appear before me on two counts namely murder and robbery. On count I, the allegations contained in the main body of the charge sheet disclose that on or about the 14th day of July, 1988 and at or near Ha Thamahane in the district of Leribe, the said accused one or each or all of them did intentionally and unlawfully kill Thabo Mokaeane.

On count II, the allegations contained in the charge sheet are that on or about the 14th day of July, 1988 and at or near Ha Mothamahane in the district of Leribe, the said accused, one or each or all of them did unlawfully assault Lisebo 'Moleli and Thabo Mokaeane by using force and violence and at gun

point stole from the said Lisebo 'Moleli and Thabo Mokaeane a cash box containing money, amounting to M2,000.00, or there about. The exact amount is to the Crown Counsel unknown. The property being that of Vincent Korotsoane in the lawful possession of Lisebo 'Moleli.

When the charges were put to them, the accused replied that they were not guilty and the plea of not guilty was accordingly entered on both counts.

At the commencement of this trial, Mr. Qhomane, Counsel for the crown, accepted the admissions made by Mr. Moorosi, counsel for the defence, that the defence would not dispute the depositions of all the witnesses who testified at the proceedings of the Preparatory Examination.

In terms of the provisions of Section (273) of the Criminal Procedure and Evidence Act of 1981, the depositions of all the witnesses who had testified at the Preparatory Examination proceedings were, therefore, accepted as evidence and it was unnecessary to call the deponents as witnesses in this trail.

Mr. Moorosi called the three accused into the witness box to testify in their defence. Their evidence does not differ materially with the evidence

of the Crown witnesses, who had testified at the proceedings of the Preparatory Examination.

Briefly stated, the evidence adduced before the court is, in as far as it is material, that on the day in question, No.1 accused met the other two accused at the bus-stop and requested them to go with him to the village of Ha Mothamahane, where they were to take money from a shop or cafe. Initially, the two accused were not prepared to join him in that venture. He then told them that he had been sent on an arrant to that village and they should accompany him. They complied.

When they came to the village of Ha Mothamahane, No.1 accused then told the other two accused that he was in fact deceiving them when he said he had been sent on an errand. He was in fact serious in his suggestion that they should go to that village to break or commit house breaking at a certain shop from which they were to take money. To give them a dutch courage, he showed them a firearm (a pistol) which he said it would be used in the commission of the robbery.

The plan was that he and accused No 3 would enter into the shop whilst accused No.2 would remain outside the shop to make sure that there were no people coming to the shop or if any people came to the shop, he

would presumably alert them. Accused No.2 highly approved of this plan and accordingly accused No.1 and accused No.3 entered into the shop.

Inside the shop, accused No.1 and 3 found a sales lady and made sure that she was aware of the firearm. When she saw the firearm, accused No.3 and accused No.1 (who was covering his face with a balaclava hat) the sales lady was apparently frightened for she immediately summoned the nightwatchman who was outside the shop.

According to the sales lady, Lisebo 'Moleli, when he came into the shop, the nightwatchman went with her to the storeroom. She told the nightwatchman that the two accused were in possession of a firearm. When the nightwatchman asked her what she was saying, the two accused approached them and accused No.1 fired a shot at the nightwatchman.

The evidence of the accused was slightly different on that point. According to them after accused 1 and 3 had entered into the shop the sales lady called for the nightwatchman, and when he entered into the shop the nightwatchman assaulted Accused No.1. At that time accused No.3 fled out of the shop. Accused 1 was prevented from going out of the shop by the nightwatchman, who stood at the door asking him

who he was and what he wanted there. Because he could not go out, accused No.1 fired at and shot the nightwatchman so that he could go out.

I simply do not believe accused No.1's story, because, if he really shot at the nightwatchman in order that he might get out of the shop, he would have gone out the moment he had shot that man. However, in his own words, No.1 accused told the court that having shot the nightwatchman, he rushed for the money or the cash box, which was on the counter instead of going out of the shop. It was only after he had taken the cash box that he ran out of the shop. That in my view is not consistent with the story of account No.1 that the purpose of shooting the nightwatchman was to enable himself to go out of the shop. Be that as it may, Lisebo 'Moleli testified that when the nightwatchman was shot, she also ran out of the shop in fear.

Coming back to the accused story, after he had ran out with the cash box, accused No.1 joined the other 2 accused and they returned home with their loot. On the way, they sat down and divided or shared the loot.

I am quite sure the accused have told me a lot of lies as to how much share each one of them got.

According to Accused No.1, the total amount of money found in the cash box was M2,000-00. They divided it equally among themselves. He told the court that each of them got an amount of M555.00. It is to be observed, however, that the sum total of those amounts does not come to M2,000-00.

According to accused 2, he was not able to count money when he had a lot of it. The money he got from that loot was a lot of money and, therefore, he was not able to count it.

According to Account No.3, his share was M2. He, however, did not know how much money was in the safe or cash box.

I am not convinced with the accused No.3's story. After they had obtained this lot of money, the accused had time to sit down and count it. I am quite sure that they counted it well and they knew how much money each of them got.

In any event, it is common cause that as a result of what they did on that day, the accused persons were eventually arrested, cautioned and charged, as aforementioned, by the police. For the sake of convenience, I shall start with count II, robbery. The essential elements which have to be proved to

establish the commission of robbery are, shortly put, that there was an assault and the purpose of that assault was to induce submission on the victim so that he or she could part with his/her property.

There can be no doubt, from the evidence, that two of the accused persons went into the shop armed with a firearm which they made sure that the sales lady would see. There can be no doubt also that when she saw the firearm in the possession of one of two of the accused persons, the sales lady got frightened, particularly so because the other one of the accused who entered into the shop had his face covered with a balaclava hat. As if that was not enough, Accused No. 1 fired the gun inside the shop and killed the nightwatchman. The sales lady fled out of the shop. Accused No.1 then immediately rushed for the cash box containing money, took possession thereof and ran out of the shop.

In my view that is enough to prove that the accused persons especially accused No.1 induced submission on the shop workers. By means of that submission, he stole the money, the subject matter of the Count II. There is in my opinion sufficient evidence establishing the commission of that offence by accused No.1. As it has been pointed out, No.1 accused was acting in concert with the other two

accused. That being the case, the other two accused were, on the basis of the well known doctrine of common purpose, as criminally liable as No.1 accused in the commission of that offence.

Coming now to count I, there can be no doubt that Accused No.1 shot at, and killed, the nightwatchman (the deceased in count I). There was no lawful reason at all why the accused person shot at, and killed, the nightwatchman. It must be remembered that when they went to the shop, all the accused were aware that Accused No.1 was armed with a firearm. They were, in my finding, aware that the purpose of carrying the firearm was to make sure that if there were any resistance against the execution of their plan, it would be removed out of the way by the use of the firearm. On arrival at the shop, the nightwatchman did show his disapproval of their presence there especially that they were armed with a firearm. There was, therefore, resistance against the execution of their plan. Accused No.1 had not hesitation to remove that resistance out of their way by the use of the firearm. In using the firearm, in the manner he did, No.1 accused had the requisite subject intention to kill, at least in the legal sense. Assuming the correctness of my finding that they were aware that No.1 accused might use the firearm in the manner he did, the other two accused likewise had, on the

principle of common purpose, the requisite subjective intention to kill.

In the result, I am prepared to find all the three accused persons quilty of murder on the first count and guilty of robbery on the second count.

EXTENUATING CIRCUMSTANCES:

Having found the accused persons guilty of murder, Section 196 of the Criminal Procedure and Evidence Act of 1981 enjoins the court to state whether or not there are any factors tending to reduce the moral blameworthiness of the accused's act. In this regard, there was evidence, as Mr. Moorosi, counsel for the accused, has pointed out, that shortly before they killed the nightwatchman, the accused persons had been at a wedding feast in the village, where they drank a considerable amount of a concoction known as pine-apple. It is common knowledge that if people take intoxicating beverages their minds become affected by such drinks and start doing things they would not do when sober.

It must also be pointed out that it is clear from the evidence, that what the accused planned was to commit armed robbery. There is no evidence that they planned or premeditated the death of the deceased.

Now, it is trite law that the absence of premeditation of the deceased's death is a factor to be properly considered for purposes of extenuating circumstances.

In the result, I come to the conclusion that in this case, there are extenuating circumstances namely, intoxication and the absence of premeditation. The proper verdict for the accused is, therefore, that in count 1, the accused are guilty of murder with extenuating circumstances.

Both my assessrs agree.

SENTENCE:

I have already convicted the accused on count I and court II. Coming now to the question of sentence, I have taken into account all the factors that have been raised, in mitigation, by Mr. Moorosi, counsel for the accused persons. As regards count I, I also take into account that, in accordance with our custom, the relatives of the deceased will, in all probabilities, sue the accused persons in civil court for compensation or to raise the head of the deceased. This criminal court is, therefore, only the first to impose punishment on the accused persons. Another

court viz. a civil court is yet to punish them. In sentencing the accused I, therefore, take this point into account in order that it may not be said the courts of law punish people twice for the same offence.

I must say I feel sorry for the accused persons who are still young and have a long future ahead of them. But what sort of a future are they preparing for, if at their ages, the accused are already murdering people and committing armed robbery? That is not the way youngsters like the accused persons should be preparing for their future.

As far as count II is concerned, the law of this country prescribes a minimum sentence of 10 years following a conviction on a charge of robbery. Each of the accused is, therefore, sentenced on count II to 10 years imprisonment with no option of a fine.

Likewise on count I the court is not empowered to impose an option of a fine as a sentence nor can it suspend any portion of the term of imprisonment imposed as a sentence. Moreover this court takes a diem view of people who deprive their fellow humans of their life for no lawful reason. In the circumstances of this case an appropriate sentence for the accused persons (on count I) will be 12 years imprisonment.

Each of the accused persons is accordingly sentenced to:

12 years imprisonment on count I

10 years imprisonment on count II.

B.K. MOLAI

JUDGE

16th February, 1990.

For Crown : Mr. Qhomane,

For Defence: Mr. Fosa for accused 1,2 and 3.