

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

v

LEHLOHONOLO MAIEANE

JUDGMENT

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

Held at Butha-Buthe

The accused has pleaded not guilty to a charge of murdering Keisi Mathiba, it being alleged that on or about the 4th day of June, 1988, and at or near Maqasane in the district of Leribe he unlawfully and intentionally killed the deceased.

At the commencement of the trial, Mr. Mphutlane, who represents the accused person, informed the court that the defence would not dispute the depositions of Doctor Cortink, Moloi Ntepe, Makhuchumane Mathiba, Lesika Lethebe, Mapeshoane Ntjana and Letsoakae Maieane who were respectively, P.W.1, P.W.2, P.W.3, P.W.5, P.W.7 and P.W.8 at the proceedings of the Preparatory Examination. On behalf of the Crown, Mr. Qhomane accepted the admissions made by the defence counsel.

In terms of the provisions of Section 273 of the Criminal Procedure and Evidence Act, 1981, the depositions of P.W.1, P.W.2, P.W.3, P.W.5, P.W.7 and P.W.8 were admitted in evidence. It was,

2/ therefore

therefore, unnecessary to call the deponents as witnesses in this trial.

In his testimony P.W.1, S/Sgt Lepheane, told the court that on 4th June, 1988 he proceeded to Magasane where he found the dead body of the deceased, he examined it for injuries and found a single wound above the right eye. He caused the dead body to be conveyed to T.V. mortuary and it sustained no additional injuries whilst it was being transported from the scene of crime to the mortuary.

The evidence of Doctor Cortink was to the effect that on the 9th of June, 1988, he performed an autopsy on the body of a male African adult. The body was identified as that of the deceased by Macuchumane Mathiba and Makhetha Mathiba. This is confirmed by Macuchumane Mathiba.

The findings of the medical doctor were that he found that the deceased had sustained a skull fracture and there was bleeding into the brain. He formed the opinion that death was due to the bleeding into the brain as a result of the skull fracture.

There can be no doubt, therefore, that the deceased died of the single wound on his head. The only question that remains for the determination of this court, is whether or not this accused person is the one who inflicted the injury upon the deceased and, therefore, brought about his death.

In this regard it is common cause from the evidence of P.W.2, P.W.5, P.W.6, P.W.7 and P.W.8 at the Preparatory Examination and, indeed, the accused himself that on the day in question there was a night vigil held in the village. During the course of that vigil, there was a quarrel between the accused and the deceased. The quarrel was, however, stopped and the two men were separated.

3/ According to

According to the accused, there was a time when he went to relieve nature outside the village. When he had finished and was returning to the place where the vigil was held, the accused met the deceased who told him to repeat what he had been trying to do at the vigil. As he thus accosted him, the deceased hit the accused with a fist and the latter fell to the ground. When he tried to get up, the deceased who was armed with an iron rod, hit the accused a blow on the leg with a stick. In self-defence the accused hit back with his stick and the blow landed on the deceased's head. The accused then managed to run away and returned to the vigil.

It is common cause that during the early hours of the morning the deceased was found dead outside the village. According to the accused, when he went to where the deceased was lying dead, he was attacked and chased by some of the people who had gathered at the scene of crime. He ran to the police station where he reported that he had come to seek security because he was being attacked by the villagers after his fight with the deceased. This is confirmed by S/Sgt Lepheane, the Police Officer who gave evidence as P.W.1 before this court.

It is significant that, apart from the accused person, none of the witnesses who testified in this case have witnessed the fight. I have, therefore, only the evidence of the accused person as to how he and the deceased fought and the latter sustained the injury that brought about his death.

According to the only available evidence before me, namely that of the accused, it is clear that the deceased was the aggressor by first hitting the accused person with a fist and then hitting him a blow with

4/ an iron

an iron rod on the leg. Assuming the correctness of his evidence it seems to me in order to repel the unlawful attack on him the accused used a stick. I am not convinced that where he used a stick to repel the unlawful attack perpetrated on him with an iron rod the accused can be deemed to have exceeded the bounds of self-defence. In the circumstances, I find that the accused was perfectly entitled to defend himself in the manner he did.

Assuming the correctness of my finding, I have no alternative but to find the accused not guilty and discharge him.

MY assessors agree.

B.K. MOLAI

JUDGE

16th February, 1990.

For Crown : Mr. Qomane

For Defendant: Mr. Mphutlane