

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

TEBOHO MABELENG

Held at Qacha's Nek

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla  
on the 8th day of May, 1990.

In these proceedings the accused pleaded not guilty to the murder of the old man Mabeleng Mabeleng, who died from a knife wound inflicted by the accused on 25th day of March, 1989 at Likhohloaneng. True to his defence the accused admitted all the depositions which were led in the court below, at the end of which he gave his own evidence. In that evidence he indicated that he didn't know that he had caused the old man an injury, a fatal injury, nor had he been aware that he was inflicting any injury should he have been aware that doing so was wrong. All these he said, occurred probably because of the advanced stage of intoxication that he was under.

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The law that governs this type of situation is to be found in Proclamation 60 of 1938. "The Criminal liability of Intoxicated Persons." The law provides that

"save as provided in this section, viz, under section 2, intoxication shall not constitute a defence to any criminal charge, except as provided in this law."

And sub-section (2) says,

"Intoxication shall be a defence to any Criminal charge if by reason thereof, the person charged at the time of the act complained of did not know that such act was wrong, or did not know what he was doing; and under sub-section (a), the state of intoxication was caused without his consent by the malicious person, or the person charged under (b) was by reason of intoxication insane, temporarily or otherwise at the time of the wrongful act."

Sub-section (3) provides that

"where the defence under the preceding sub-section is established, then in a case falling under paragraph (a) thereof, the accused person shall be discharged; and in a case falling under paragraph (b) the provisions of sub-section (2) of section 169 of the Criminal Procedure and Evidence Proclamation shall apply."

Now, section 169 of the proclamation has been changed into section 172 of the Criminal Procedure and Evidence Act of 1981. Sub-section (2) of 172 says,

"If the court finds the person charged with an offence insane, the court shall record such verdict and shall issue an order committing such person to some Prison pending the satisfaction of the King's pleasure, or the court may make any order which it deems fit."

It stands to reason, therefore, that from my evaluation of proceedings before me, the accused does not fall under sub-section (a) of sub-section (2) of section 2, but rather falls under sub-section (b) of sub-section (2) of section 2, which provides that

"The person charged - if the person charged was by reason of intoxication insane, temporarily or otherwise, he falls to be treated under section 172 of

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the C.P. & E. of 1981."

The accused doesn't deny that he may have caused the act. Witnesses say that he actually caused it, and relying on that evidence it seems the crown has proved that the accused is responsible or is criminally liable for the death of the deceased.

I have taken into consideration the age of the accused. While the empowering section does provide that the accused should or could be kept in Prison pending the signification of the King's pleasure taking into account the age of the accused and taking into account the circumstances under which he was led into the type of voluntary insanity that he brought upon himself, viz. voluntarily taking liquor which resulted in some form of madness, I feel therefore that it would be proper to impose some other alternative form of punishment allowed by the same sub-section (2) which says that the court may make any order which it deems fit. I have taken into account the fact that the accused has admitted every piece of evidence levelled against him. I have seen the way in which he stood the cross-examination and that he manifested to me honesty in his answers to the questions put. He didn't seem evasive.

Taking all these into account, my assessors and I feel that you have got to be given a chance to behave well in society; and I hope you have learned your lesson and that you are going to desist from experimenting with liquor.

The verdict I have lighted on is that you were insane at the time that you committed this offence on account of the liquor you had voluntarily consumed, and the sentence my assessors and I have agreed upon is that you go to Gaol for 4 years, half of which is suspended for 3 years on condition that you shall not be convicted of a crime involving violence to the person of another committed during the period of the suspension of the sentence.



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J U D G E.

3th May, 1990.

For Crown : Mr Lenono

For Defence : Mr Fosa.