CRI/T/60/90

IN THE HIGH COURT OF LESOTHO

In the Matter of:

R E X

v

1. NTAOTE TAALA
2. NTOKO QOANE

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai

on the 8th day of August, 1991.

The two accused are before me on a charge of murder, it being alleged that on or about 28th July, 1986 and at or near Manganeng, Mphaki, in the district of Quthing they did one or other or both of them unlawfully and intentionally kill Peter Seoaholimo. They have both pleaded not guilty to the charge.

At the commencement of this hearing, Mr. Putsoane, who represents the accused, informed the Court that the defence would not dispute the depositions made by P.W.1, 2,3,4,5,6 and 7 at the Preparatory Examination. Mr. Lenono, who represents the Crown in this case, admitted the admissions made by the defence.

In terms of the provisions of Section 273 of the Criminal Procedure and Evidence Act, 1981, the depositions of all the witness who testified at the Preparatory Examination became evidence. It was, therefore, unnecessary to call the deponents as witnesses in this trial.

The evidence which is, therefore, common cause is that of P.W.4, Trooper Monyobi who testified that on the 29th July, 1989 he received a report, following which he proceeded to a place called Sekokoaneng where he found the dead body of the deceased. On examining the body for injuries he found that it had sustained multiple open wounds on the head. He conveyed the body to the mortuary at Quthing.

The evidence of Dr. Thatcher Gloss, who was P.W.5 at the Preparatory Examination proceedings, is to the effect that he was the medical doctor, who, on the 31st July, 1989, examined or performed a post mortem

examination on the dead body of a male African adult. The body was identified as that of Peter Seoaholimo, the deceased in this case, by Molikoe Kokoropo and Makoae Ramakhetheng. Molikoe Kokoropo did give evidence and confirm the evidence of the medical doctor that he was the one who identified the body of the deceased.

The medical doctor's external examination revealed multiple injuries on the head. On opening the body he found that there was a huge fracture of the skull, subdural haematoma and haemorrhage. From these findings the doctor opinioned that a savage degree of force had been used to infringe the injuries, and that death was due to the skull fracture, subdural haematoma and haemorrhage.

I find no good reason why the opinion of the doctor in this case should be doubted. The only question for the determination of this Court is whether or not the accused are the persons who have inflicted the injuries on the deceased and, therefore, brought about his death.

The two accused persons have made confessions before a magistrate. In these confessions they have told the magistrate that they were the ones who assaulted the deceased. The question I have earlier

posted viz. whether or not the accused are the persons who have inflicted the injuries on the deceased and, therefore, brought about his death, must be answered in the affirmative.

No. 2 accused did not give any evidence. He closed his case without testifying in his defence as he was perfectly entitled to do. No. 1 accused gave evidence in which he admitted to have assaulted the deceased. His reason for so doing was that the deceased had stolen his sorghum and when he confronted him about it, the deceased started assaulting him. He said the deceased who was very agile hit him a blow on the arm and fell him to the ground. Before he (accused) could get up the deceased, in his agility, delivered another blow on the same spot. It was only after he had got up from the ground that the accused struck the deceased a blow.

It is to be noted that according to the medical doctor who examined the body, the deceased was a 65 years old man. There is no doubt in my mind that the accused person is exaggerating the manner in which he described the deceased, an old man of 65 years, to have assaulted him. I am fortified on this view by the fact that when he appeared before the magistrate and made the confession, the accused never mentioned

that the deceased had also assaulted him. What he told the magistrate was that he (accused) had assaulted the deceased with a stick.

I reject as false the exaggerated story made by the accused before this Court and accept as the truth the crown version viz. that the two accused assaulted the old man on the mere suspicion that he had stolen the sorghum of the first accused.

I do not think the accused were, in the circumstances, entitled to assault the deceased as they did. If they thought the deceased had stolen the sorghum, the accused should have brought him before the courts of law rather than take the law into their own hands and assault the old man. In my findings the two accused are the persons who inflicted upon the deceased the injuries that brought about his death.

The salient question for the determination of the Court is whether, in so doing, the accused had the intention to kill. There is plenty of evidence showing that in assaulting the deceased, the accused were hitting him on the head which is the upper part of the human body and very vulnerable. In assaulting the deceased in the manner they did, the accused were quite aware that death was likely to occur. Reckless

of whether or not it did occur, they assaulted the deceased in the manner they did. In my view the accused did have the requisite subjective intention to kill, at least in the legal sense. In the result I find the two accused persons guilty of murder as charged.

EXTENUATING CIRCUMSTANCES

The two accused having been found guilty of murder, this Court is enjoined by the provisions of Section 296 of the Criminal Procedure and Evidence Act, 1981 to find whether or not extenuating circumstances exist. By extenuating circumstances I mean any factors that may turn to lessen the moral blameworthiness for the accused's act. In this regard the Court has already found that in assaulting the deceased to death, as they did, the accused had the intention to kill in the legal sense. That is, in itself, a factor which can properly be taken into account for purposes of extenuating circumstances.

There is also another factor pointed out by the Defence Counsel viz. that the accused may have subjectively believed that the deceased had stolen

sorghum that belonged to No.1 accused. That may have, in their minds, set a provocation which should also be taken into account for purposes of extenuating circumstances

There was also evidence that shortly before this unfortunate incident took place, the deceased and the two accused had been at a drinking place viz. the home of P.W.1 at the Preparatory Examination Proceedings. The possibility that the accused may have been under the influence of intoxication cannot, therefore, be ruled out. It is a well known fact that when they are under the influence of intoxication, people do things which they would not do when sober. This is a factor to be taken into account for the purpose of extenuation.

By and large, I come to the conclusion that extenuating circumstances do exist in this case, namely, the absence of premeditation on the part of the accused persons; the belief, even if it were a wrong belief, that the deceased had stolen No. 1 accused's sorghum and also intoxication. That being so the proper verdict is that the two accused are guilty of murder with extenuating circumstances.

SENTENCE

I now come to the question of sentence. For the benefit of the accused persons, I have taken into account that they are first offenders. I have also taken into account all the factors that had been raised in mitigation by the defence counsel. I shall not, however, turn a blind eye to the seriousness of the offence with which these accused persons have been convicted. On numerous occasions this Court has warned that it will take a very diem view of people who lightly deprive other humans of their God given life. The warning of the Court does not seem to be heeded. There is a need, therefore, to impose sentences that will be really deterrent to the accused person; sentences that will demonstrate, beyond any doubt, to the members of the public that the Courts do not encourage people to deprive other fellow humans of their lives. I have, for these reasons, come to the conclusion that a sentence that will be appropriate for No. 1 accused is that he should serve a term of 10 years imprisonment. I accordingly sentence him.

As for No. 2 accused, I have been told that when he committed this offence he was only 17 years old. It is a disgrace for children of seventeen years to start killing people. Accused No. 2 is still young and has many years to live. One wonders how many

people he will have killed by the time he reaches the age of 65 years.

I think the Prison Authorities will be over lenient with him because of his age. I have decided, therefore, to deal with him rightaway by telling him that we have no prisons for small children like him. He is, therefore, sentenced to eight (8) strokes with a light cane to be administered in private by a member of the Prison staff.

B.K. MOLAI

JUDGE

8th August, 1991.

For Crown : Mr. Lenono
For Defence : Mr. Putsoane.