

CRI/T/9/91IN THE HIGH COURT OF LESOTHO

In the Matter of:

R E X

v

MOSIUOA MAKHALE

J U D G M E N TDelivered by the Hon. Mr. Justice B.K. Molaion the 17th day of October, 1991.

The accused is before me on a charge of murder, it being alleged that on or about 14th March, 1988 and at or near Ha Letuka in the district of Thaba-Tseka he unlawfully and intentionally killed Remaketse Motlatsi.

When the charge was put to him the accused pleaded guilty to culpable Homicide. Mr. Drametru who represents the accused in this case told the court that the plea was in accordance with his instructions. Mr. Lenono, counsel for the crown, told the court that the crown accepted the plea of guilty to culpable Homicide tendered by the defence. The plea of guilty

to culpable Homicide was accordingly entered.

It is significant that S.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 offence other than murder, bring in a verdict without hearing any evidence;"

As it has already been pointed out earlier, in the present case, the accused who is charged with murder has pleaded guilty to culpable Homicide which is a competent verdict to a charge of murder. The crown counsel has accepted the plea of guilty to culpable Homicide tendered by the defence.

On the authority of the provisions of the above cited S.240(1)(a) of the Criminal Procedure and Evidence Act, 1981 there is, in the circumstances of this case, no need to adduce evidence and the High Court is perfectly entitled to return a verdict without hearing any evidence at all.

I would accordingly find the accused guilty of culpable Homicide on his own plea.

Both my assessors agree with this finding.

### SENTENCE

Coming now to the question of his sentence, the court took into account that the accused had no previous convictions and was, therefore, a first offender. The court was also invited to consider a number of factors in mitigation of the accused's sentence. They were all considered. In particular the court took into account the fact that the deceased, a young boy of about 10 years had allegedly been misbehaving, disobedient and ended up in sleeping away from home. In an attempt to correct his behaviour the accused decided to administer corporal punishment to the boy but unfortunately overdid it.

It must, however, be brought home to the accused and people of his mind that although it is, in law, permissible to administer punishment to children who are misbehaving, the punishment must be moderate. In the instant case the medical report showed that following the corporal punishment administered by the accused the little boy was found to have weals all over the body, a skull fracture and subdural haemorrhage which resulted in his death. The injuries found on the deceased boy are, in my opinion, not at all consistent with the accused having administered a moderate punishment.

He had clearly exceeded the limits of a moderate punishment and if a repetition of this sort of a thing were to be brought to a halt there is the need to impose a deterrent punishment.

The accused is sentenced to pay a fine of M180 or, in default of payment of the fine, to serve a term of 18 months imprisonment.

A handwritten signature in black ink, appearing to be 'B.K. Molai', written in a cursive style.

B.K. MOLAI

JUDGE

17th October, 1991.

For Crown : Mr. Lenono,

For Defence: Mr. Drametru.