

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

LEFA LENGOEHA

HELD AT BUTHA BUTHE

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 10th day of June, 1991

The accused is charged with the crime of Murder, it being alleged that on or about 15th April 1989 and at or near Phahameng in the district of Butha-Buthe he did unlawfully and intentionally kill Teboho Mokopu. The accused pleaded not guilty to this charge.

On behalf of the accused the preparatory depositions of all witnesses who appeared and deposed before the court below were admitted, but because the recording machine was out of commission the public prosecutor Mr. Qhomane was asked for the benefit of my assessors to make short summations of the depositions of the witnesses who appeared before the court below. That he duly did.

At the close of the Crown case the accused gave his own evidence.

In brief the evidence of the Crown witnesses is that

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there was a feast at the home of the accused and that sometime during the night the accused's wife's aunt came complaining to the accused and his companion one Charlie who were seated in a hut that someone had smacked her with a clap across the face. The accused went to investigate. Meantime there was a hue and cry when an unknown man was hotly pursued by people who were outside. The accused didn't see this but at a later stage the accused was conducted by his uncle Charlie to a place where a man had fallen and had been beaten by people who had been seen giving chase after him. The accused was asked by Charlie who provided the accused with a knife for the purpose, to stab the man who had fallen. The accused duly complied and inflicted two stab wounds on the chest of the deceased whereupon the deceased died.

The accused was seen going to a tap and wash his hands.

I have already stated that the accused admitted every bit of statements contained in the depositions before the court below.

In his own defence when giving evidence the accused states that he is 42 years of age and that on the day in question he had been sitting in his combi trying to remove its engine. He was in the company of two other people including Charlie. He sent them to go and buy him six cans of beer and the type of gin called Old Buck, - a half bottle of this drink. This was bought and the accused and his friends joined him in drinking this.

The accused repeated this order; and something that surprised him was that the quantity of drinks each time which were brought was larger than the ones that he had ordered. So, he believed that his friends were also buying extra quantities of alcohol and that the accused was not restricted to drinking his own order of alcohol. He said

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he had set aside twenty Maloti as the amount that he was going to use in entertaining himself. He believes that he took alcohol far in excess of the amount that M20-00 could fetch. He says he was so drunk that he didn't know how he left the combi where he had been drinking. He only discovered at a much later stage that he was lying under a table surrounded by his wife and several of people who were at this feast.

In an endeavour to show that he was not being truthful the accused was referred to a confession that he made and in which there is significant absence of his statement to the Magistrate who took down his confession of the fact that he knew nothing of what had happened. Further use was made of the averments he had made in his application for bail concerning this offence in which again there was absence of any indication on his part that he knew nothing of what he had done.

The accused seeks to rely on provisions of the Criminal Liability of Intoxicated Persons. His counsel sought to persuade the Court that the accused's case falls to be treated under the provisions of the relevant section. The section shows that intoxication is not a defence to a charge of Murder, but that it could serve as such, if it is shown that the accused was intoxicated not voluntarily but through the malicious act of another.

In this case it is clear that the accused was not forced to drink albeit he had exceeded what quantity he intended drinking. He exceeded this no doubt because of his own willingness to please his friends or his drinking mates who had joined him. So I cannot see in such a situation any degree of involuntariness on his part. I do therefore come to the conclusion that the accused is guilty of Murder as charged.

There will be no need for counsel to address me on

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extenuation because I'm convinced of the fact that liquor played a great part in the offence that was committed by the accused. The Court having been addressed on mitigation imposed a sentence of five (5) years' imprisonment.

J U D G E

10th June, 1991

For Crown : Mr. Qhomane

For Defence: Mr. Fosa