

CRI/T/45/93

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

RAPULE MAKHETHA

JUDGMENT ON EXTENUATING CIRCUMSTANCES

Delivered by the Honourable Mr Justice T. Monapathi  
on the 21st June, 1994

Having convicted the accused of murder on the 15th april 1994, I am enjoined by Section 296(1) of the Criminal Procedure and Evidence Act, 1981 to state whether or not there are any factors connected with the commission of the crime tending to reduce the moral blameworthiness of his act.

In this regard both Counsels have pointed out the following factors which I have noted and I have already made a finding thereon in my main judgment. They are these factors of absence of premeditation that the Accused was only guilty of intention in the sense of dolus eventualis and finally that he was drunk

in the way I have described, when he committed these killings of his brother and uncle.

What the court will look for in considering the question of extenuating circumstances are well summarised in S v Letsoalo 1970 (3) 476 (A) as approved in Thembibosi Yawa CRI/T/59/88 (unreported) and R v Monyamane Sibete Mohola CRI/T/58/90 (unreported). It is correct that one of these factors either alone or cumulatively need not necessarily form extenuation. (See Khoabane Sello v Rex C of A CRI/5/80. Mohlalisi and Others V Rex 1981(2) LLR 396) A pithy remark about intoxication as a factor is to be found in S v Ndlovu (2) 1965 (4) 692 at 695. I adopt it. Indeed there is no requirement in our law that the consumption of alcohol shall be excessive. Dolus Eventulis does not per se amount to extenuating circumstance. It can in the light of other circumstances be a factor to be considered. (See R v Rooi en Oudere 1976 (2) SA 580) The finding of absence of pre-meditation together with other circumstances can amount to extenuating circumstances (see R v Taylor 1949 (4) SA 702, R v Mharadzo 1966(2) SA 707.

I am satisfied that having regard to the cumulative effect of the circumstances relevant to the Accused's moral blameworthiness, there was extenuation (see S v Mayathi 1967 (1) SA 435). My Assessors agree.

MITIGATION

The likelihood is remote that there will be a claim for damage against the Accused for this death when he comes out of prison. Put the other way the likelihood of recovery of such damages is not bright. The man has killed his next of kin. He has spent about two years in prison already. I do observe that since the time of his conviction he has deteriorated in his physical condition. I am sure it had dawned on him that his acts were serious and permanent. Many things have been singled out by Counsel in favour of the Accused which include his family and dependants. I have considered them. But the Accused has brought about the loss of two fathers to two families. I do not think that he will ever be in a position to adequately compensate the stranded families.

I am much concerned about what I observed to be the naivety absent-mindedness and signs of outright stupidity that seem to single out this Accused from what is normal of a man in his community. I was not inclined to ignore this factor as something that may have contributed to the circumstances of the fateful night. To me it evoked a feeling of sympathy and need for mercy. I would make the following sentences of terms of imprisonment.

1. Count I Ten Years
2. Count II Ten Years

Both sentence are to be served concurrently.

T. MONAPATHI  
JUDGE

21st June 1994

For the Accused : Mr. Mathafeng

For the Crown : Miss Nku