

C. OF A(CRI) 9\91

IN THE COURT OF APPEAL OF LESOTHO

In the matter between:

SECHACHE PHOLO

APPELLANT

and

R E X

RESPONDENT

HELD AT MASERU

Coram:

Kotze' J.A.  
Browde J.A.  
Leon J.A.

JUDGMENT

KOTZE' J.A.

This appeal, in my view, is without merit.

Lehohla J. and assessors tried and convicted the appellant on an indictment of murder which charged him with the unlawful and intentional killing of Thabang Mohapi (the deceased) at Matlapaneng on the 9th December 1987. At ~~the~~ extenuating circumstances were found and a sentence of 13 years imprisonment was imposed. The appellant now appeals against the conviction.

The deceased died on the date alleged in the indictment.

His death was due to multiple stab wounds and an extensive haemothorax with lung collapse. He sustained his injuries at the hands of the appellant. Three eye witnesses, two of whom are close relatives of the appellant and who were not suggested to bear him any malice, testified on behalf of the Crown. Each one of them testified that the appellant met the deceased whilst he was driving the appellant's sheep to the pound. Upon meeting each other the appellant reprimanded the deceased referring to a previous similar incident and a court case in which the two men were on opposing sides. These three eye witnesses gave similar evidence of an assault which the appellant immediately launched on the deceased. Each one of them described how the appellant hit the deceased on the head with a stick, how he fell down, how he was further "belaboured" on the ground with a stick and how the appellant followed this assault up by stabbing him several times with a knife as a result of which he succumbed. The appellant's version briefly stated was as follows. When he met the deceased whilst driving his sheep he asked him what he was doing. The deceased did not answer and pulled out a knife. The appellant hit him on the hand with a stick, he inflicted a second blow on his neck, the appellant's knife slipped out of his grip, he took hold of it and stabbed the deceased several times.

The trial Court rejected the appellant's evidence and accepted the evidence of the eye witnesses. Regard being had to

the advantages enjoyed by a trial Court, the existence of a probable grievance by the appellant against the deceased and the total lack of any motive on the part of the eye witnesses falsely to incriminate the appellant, it is quite impossible to disturb the finding of the trial Court.

The appellant's attack on the deceased was an extremely severe one. Wounds were inflicted on him with dangerous weapons and the conclusion is unavoidable that subjectively the appellant must have appreciated that his conduct threatened the deceased's life and that he was reckless whether or not his conduct would lead to his death.

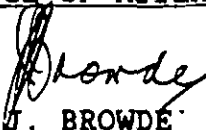
There is no appeal against sentence nor is there any basis for interfering with the sentence which the trial Court imposed.

The appeal is dismissed.

Delivered in Maseru on ~~21st~~ day of January, 1994.



G.P.C. KOTZE'  
JUDGE OF APPEAL



J. BROWDE'  
JUDGE OF APPEAL

I agree

I agree



R. LEON  
JUDGE OF APPEAL