C. OF A. (CRI) NO.11/91

IN THE LESOTHO COURT OF APPEAL

In the matter between:

SOSOLO MAQEBA — APPELLANT

AND

REX — RESPONDENT

HELD AT:

MASERU

CORAM:

STEYN, J.A.
KOTZÉ, J.A.
LEON, J.A.

JUDGMENT

KOTZÉ J.A.

Despite his plea of not guilty the appellant was convicted on two counts of murder and one count of theft. The deceased were husband and wife referred to at the trial as Paballo and Mannena respectively. On count 1 which relates to the murder of Paballo the appellant was sentenced to 15 years' imprisonment and on count 2 which relates to

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the murder of Mannena he was sentenced to death after a finding that extenuating circumstances were not present. Count 3 related to the theft of a wallet, a watch and the sum of M1-50. The appellant was convicted of the theft of the wallet and the money.

At the hearing of the appeal which the appellant noted against his convictions and the death sentence Mr. Sooknanan, who appeared on behalf of the appellant, informed us that he could not seriously contend that the convictions on counts 1, 2 and 3 should be set aside. The case against the appellant in regard to his guilt was a formidable one and Mr. Sooknanan's concession was properly and correctly made. In the result the appeal proceeded only against the finding on count 2 that extenuating circumstances were not present and that the death sentence should not have been imposed.

For the present purposes I need to do no more than to set out the material facts briefly. On the 18th March, 1989 (a Saturday) Lebohang Mafoso and his wife Mampe were at Ha Rampeli with the two deceased attending a ceremony for the removal of a mourning cloth. The two deceased left at late dusk. Lebohang and his wife left late. A great deal of liquor had been consumed. On the way he heard someone whistle. It was the appellant who told him "I have done

something bad. I killed Paballo and Mannena". They came across the body of Mannena. The appellant asked him to assist in throwing the body over a ridge in order to conceal it. He threatened him with death if he did not do so and he complied with his request. Then they walked along a path leading home and came across the body of Paballo. The appellant searched the body and removed from it a brown purse and M1-50.

Mampe asked the appellant why he had killed the deceased. He replied he had done so because they were making life difficult for his aunt.

From the scene they went to the house of Mathoriso. He told Mathoriso that he killed Paballo and Mannena. They then went to Mantsi (appellant's aunt) where he told her that he had just killed Paballo and Manena. She started crying whereupon the appellant said, "I killed her because she shouted my name".

The above resume sets out the gist of the Crown case and remained uncontradicted as the appellant did not testify. Although several other witnesses testified on behalf of the Crown I find it unnecessary to refer thereto in considering the appeal against sentence.

There are two legs to Mr. Sooknanan's argument in regard to extenuating circumstances. The first leg centres around the motive i.e. what impelled the appellant to commit the two murders? In this regard the evidence is that when asked to explain his conduct the appellant said, "they" (the two deceased persons) "were making life difficult for his aunt". An additional reason given for killing the female deceased and said by Counsel to be part of the overall motivation was that she shouted his name and thus could and did reveal his identity. Mr. Sooknanan submitted that there is no indication that the trial Court took the full motivation aspect into account and thus misdirected itself.

The second leg of the extenuation argument is based on the extent of the appellant's intoxication. His overall behaviour was strange in the extreme: on the one hand he openly discloses that he has "done something bad" and on the other hand he kills the female deceased because she could disclose his identity. Furthermore there is evidence that he instructed Mampe to throw away a watch found on one of the bodies and then burnt some white papers of the male deceased. The strange nature of the evidence clearly establishes the probability that the appellant consumed a substantial quantity of liquor at the mourning cloth ceremony. When his aunt asked him why he had done "this terrible thing" he replied, "I was drunk".

I consider there to be substance in regard to the contentions advanced by Counsel. In addition there is no suggestion of premeditation on the part of appellant. On a fair conspectus of all the evidence and paying due regard to the background evidence of life having been made difficult for his aunt there can be little doubt that appellant's mind was in a turbulent state when he committed the distressing murders. There is no real indication that the trial Court approached the question of extenuating circumstances in this light. The learned Judge confined his remarks in this regard to a single sentence: "I am of the firm opinion that there are no extenuating circumstances in respect of the killing of the deceased Mannena". Properly approached the trial Court should, in my opinion, have found that the abovementioned factors serve to reduce the moral blameworthiness of the appellant and that extenuating circumstances should have been found to be present in respect of count 2. I consider that an appropriate sentence for this very serious offence would be 15 years' imprisonment.

The appeal succeeds to the extent that the verdict of guilty on count 2 should be amended by adding to the verdict the words "with extenuating circumstances" and setting aside the death sentence and substitution of in its stead a sentence of "15 years' imprisonment, the said

sentence to run concurrently with the sentence imposed on count 1".

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G.P.C. KOTZÉ
JUDGE OF APPEAL

I agree .....
J.H. STEYN
JUDGE OF APPEAL

I agree .....
R. LEON
JUDGE OF APPEAL

Delivered at Maseru This 23rd Day of January 1994.