

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

v

MOLELEKI MOTHE

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai

on the 30th day of August, 1995.

The accused appeared before me charged with a crime of murder. The facts disclosed by the body of the charge sheet were that on or about 28th June, 1990 and at or near Ha Mothe, Mpharane, in the district of Mohale's Hoek the accused unlawfully and intentionally assaulted Pesa Sekete and inflicted upon him certain injuries as a result of which the said Pesa Sekete died on 29th June, 1990 at the Government hospital of Mohale's Hoek.

When the charge was put to him, the accused pleaded guilty of Culpable Homicide. Mr. Phoofolo who represented the accused in this matter told the court that the plea of guilty to culpable Homicide tendered

by the accused person was in accordance with his instructions. Mr. Thetsane, for the crown, accepted the plea of guilty to culpable Homicide tendered by the Defence.

It is trite law that in a criminal case, the crown is Dominus litis. Where the crown decides to accept the plea of guilty to culpable Homicide tendered by the defence, as it has done in the present case, the court cannot refuse the plea. The plea of guilty to culpable Homicide tendered by the Defence and accepted by the Crown was accordingly entered and the provisions of S. 240(1)(a) of the Criminal Procedure and Evidence Act, 1981 invoked.

The section reads:

"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;"

In the present case, the accused, who is charged with the crime of murder has pleaded guilty to culpable Homicide which is an offence of which he may be found guilty on a charge of murder i.e. culpable

Homicide is a competent verdict of murder. On the authority of the provisions of the above cited section 240(1) (a) of the Criminal Procedure and Evidence Act, 1981, it seems to me, that the High Court is empowered to return a verdict without hearing any evidence at all. The accused is accordingly found guilty of culpable Homicide, on his own plea.

My assessors agree with this finding.

SENTENCE:

In mitigation of the accused's punishment, the court was told that he had no record of previous convictions. He was, therefore, a first offence.

On behalf of the accused, the Defence counsel also invited the court to consider in mitigation of his punishment, a number of factors which were tabulated so well that it would be unnecessary for me to go over them again save to say that they were all taken into account, particularly the fact that the accused was, according to the charge sheet, only about 18 years old at the time he committed the offence against which he now stands charged.

The court is, however, not prepared to turn a blind eye to the seriousness of the offence with which

the accused person has been convicted. He has deprived another person of his life. A human life is God given and for that reason sacred. This court has, on numerous occasions, warned that it will take a rather diem view of people who seem prepared to deprive their fellow humans of their lives for the flimsiest of reasons. These warnings of the court seem to be going unheeded. There is, therefore a need to impose a sentence that will deter the accused person from a repetition of this sort of a thing and serve as a lesson to people of his mind that the courts of law will not tolerate this kind of behaviour.

In the result, the accused is sentenced to pay a fine of M500 or serve a term of 5 years imprisonment in default of payment of the fine.

B.K. MOLAI

JUDGE

30th August, 1995.

For Crown : Mr. Thetsane,

For Defence: Mr. Phoofolo.