

CRI/T/71/91

IN THE HIGH COURT OF LESOTHO

In the matter between :

R E X

v

MOTLALEPULA MPHOSO

S E N T E N C E

Delivered by the Honourable Mr. Justice T. Monapathi
on the 28th day of February 1995

The Accused had been charged with the crime of murder. He admitted guilt to the crime of Culpable Homicide. His plea was accepted by the Crown and this Court, after outlining the facts that would be led in evidence.

I have taken note of everything in that outline and in the address of the Defence Counsel. Of importance I noted that the Accused had been extremely provoked. I mention that I have also taken note of the Accused's personal circumstances, among others the community to which he belongs, and his age.

/...

What gave me and gentlemen assessors a bit of a problem was that the Accused did not give evidence in mitigation. This we are not blaming him for. If you had gone into the witness box, there are a few things that we should have been able to elicit from him, because this outline by the crown and the statements of your Counsel do not always say everything. Of course, there are risks that go with having to reveal certain things under oath. That he may have wanted to avoid. But in my view being candid to this Court outweighs everything. It needs no emphasis. This is so, because for example, we would have been able to learn if there was drinking, what time of the day and some such aspects. And he would have been able to explain why this deceased suffered this number of wounds and how?

We have noted that these number of wounds was inordinate. As a Court we would close our eyes to that. It would be unfair in the whole process. The Accused has used a knife. If he gave evidence he would have been able to tell us why he had to use a knife. We are aware that there are cases where one fatal stab wound is administered results in death. But all that was necessary is an explanation towards mitigation of sentence.

/...

This Court has a duty to perform. It is a duty to punish people who have committed offences, and the member of the public are here to see that, that actually happens. It is that people are punished for their offences and the punishments that the Courts give are not a joke. They must be realistic. So that this Court also has a duty to the relatives of the deceased in that they have lost a relative. The Accused is lucky. He is still alive. If he is sent to prison he will still come back. But the deceased will not come back. He is gone forever. His relatives have lost him forever. He is lost to his community forever.

I accept that it is correct that there is a modern trend not to send people to prison. Because according to this trend there are fears that a young man as the Accused when he is sent to prison, he will meet with hardened personalities. It would be that even if the Accused went as a good man who may have committed this offence by way of an accident (so to speak), having met these characters in prison he comes out corrupt. This is so because he would have adopted the attitudes of certain people, some of whom are hardened criminals. This Court accepts that this sometimes inevitably happens. But then this Court is still

/...

mindful of that need I have earlier spoken about. This is, to impose realistic punishments.

I have taken note of the fact that the Accused has no previous convictions and he is a first offender. He is a young man of twenty six years of age. He is a bread-winner. He has a younger brother. He has pleaded guilty and has shown remorse. These indicates to me that he is prepared to co-operate with the machinery of justice in this country. I have also taken note that it is some time since he has been brought before Courts and released on bail. He has appeared before the Court most readily and he has abided by the conditions of his bail.

We note that the use of a knife in fights is now prevalent. The Courts of law are not happy with that trend. Now in a lighter note. We remember that in the old days there used to be this thing called "a fair fight". In no way is this condoned. It was a regulated fight with fists and at times with sticks in the rural areas. This is no more. People now fight to kill.

Having said these, we have decided to impose on the Accused a very lenient sentence which my assessor and I

/...

agreed. The sentence will bring home to Accused the impact of these considerations I have outlined. I have decided to impose on the Accused a sentence of five (5) years without an option of a fine.

T. MONAPATHI
JUDGE

For the Crown : Mr. L. L. Thetsane

For the Accused : Mr. E. H. Phoofofo

Assessors : Mr. G. Ramoseme and Mr. T. Mopeli