

CRI/T/58/2000
IN THE HIGH COURT OF LESOTHO

In the matter of:
REX
vs
TEBOHO MOHANOE

JUDGMENT

Delivered by the Honourable Mr. Justice B.K. Molai on 22nd day of May, 2001.

The accused is before me on a charge of murder, it being alleged that on or about 9th December, 1995 and at or near Phahameng, in the district of

2

Mafeteng, he unlawfully and intentionally killed Ntemane Malitsoanelo Mohanoie Raletima.

When it was put to him, the accused pleaded not guilty to the charge of murder but tendered a plea of guilty to assault with intent to do grievous bodily harm. The crown counsel accepted the plea of guilty of assault with intent to do grievous bodily harm, tendered by the accused person.

It is significant to observe that S. 240 (1) (a) of the Criminal Procedure and Evidence Act, 1981 provides:

"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; or.....".

In the instant case. The accused, who is charged before the High Court with the offence of murder, has tendered a plea of guilty to assault with intent to do grievous bodily harm viz. an offence other than murder. The crown

3

counsel, who is prosecuting the case, has accepted, as she is entitled to do, the plea of guilty, tendered by the accused.

Assault with intent to do grievous bodily harm is a competent verdict to a charge of murder i.e. where, as it is the case here, the accused is charged with the offence of murder it is permissible for the Court to convict him of a lesser offence e.g assault with intent to do grievous bodily harm. Indeed the High Court is empowered to return the verdict of guilty on a charge which is lesser than murder without hearing any evidence or, for that matter, an outline of the facts disclosed by the evidence in the possession of the Crown Counsel/Prosecutor.

In terms of the provisions of the above cited S. 240(1) (a) of the Criminal Procedure and Evidence Act, 1981 the accused is, therefore, found guilty of Assault with intent to do grievous bodily harm, on his own plea.

Both my assessors agree with this finding.

SENTENCE

Having found him guilty of assault with intent to do grievous bodily

4

harm, it now remains for the court to determine what punishment will be appropriate for the accused, in the circumstances.

On his behalf, the court is told that the accused has no record of previous convictions. He is, therefore, a first offender.

The court was invited to consider a number of factors in mitigation of sentence. They have been eloquently stated by the defence counsel and there is no need for me to go over them again. Suffice it to say, they have all been taken into account in determining the appropriate sentence for the accused person.

Of particular importance, the court was told, in mitigation, that the deceased was the accused's wife with whom she had children whose ages range from 8 to 14 years. They are, therefore, still minors and in the absence of the deceased, their mother, the accused now remains their only bread winner. The painful thing is that in punishing the accused, the minor children of the deceased stand to suffer most. There is no evidence that these minor children have committed any crime for which they deserve punishment.

The court is further told, in mitigation of sentence, that on the evening

5

of the day in question, the accused saw his wife, the deceased, talking to another man. He suspected her of having a love affair with that other man. The accused then took a thin stick with which he started beating up the deceased. Thereafter, they went to bed together and the accused thought the matter had been settled. However, in the morning the accused tried to speak to the deceased who did not respond. To his shock the accused realised that his wife was dead. He raised an alarm and reported to the police who arrested him and conveyed the dead body of the deceased to the mortuary at Mafeteng government hospital. A post-mortem examination was subsequently performed by the medical doctor who was a qualified pathologist. According to the post-mortem examination report, the deceased had weals on the body but the cause of death was "unknown".

The court has also taken into consideration that the accused pleaded guilty, hopefully, as a sign of remorse. Notwithstanding all the factors taken into account, in mitigation of the sentence, the court is not prepared to turn a blind eye to the seriousness of the offence with which the accused has been convicted.

A wife is not a child. She is a grown up. If the accused thought his wife had committed a wrong, he had no right to beat her up with the thin stick or at all. He ought to have sat down, and discuss the issue, with her like

6

two grown up people. The Sesotho saying that "a woman is a child" is now outdated. There is, therefore, a need to impose a sentence that will remind the accused and people of his mind that the courts of law take a diem view of people who treat our women folk as if they were children. A sentence that will, indeed, serve as a deterrent from a repetition of the sort of behaviour against which the accused has been convicted.

In the result, the sentence I consider appropriate for the accused person is that he must pay a fine of M180.00 or serve a term of 18 months imprisonment, in default of payment of the fine. He is accordingly sentenced.

B.K. MOLAI
JUDGE

For Crown: Ms Makoko
For Defence: Mr. Lesuthu