IN THE COURT OF APPEAL OF LESOTHO

C of A (CRI) No. 13 of 2005

In the matter between:

BOKANG FASO **APPELLANT**

and

REX **RESPONDENT**

CORAM:
Steyn, P
Ramodibedi, JA
Melunsky, JA

5th October 2006

JUDGMENT

Summary

Appellant convicted of murder. – Appeal directed against conviction. – Only submission that appellant acted whilst in a state of "sane automatism". – No evidence to support such defence adduced. – Appeal dismissed.

[1] The appellant, a Mosotho male, 17 years old at the time of the commission of the crime, was convicted in the High Court on a charge of murder. He was sentenced to 8 years imprisonment. He

appeals against his conviction on the following grounds:

"1.

> The learned Judge erred in finding the accused guilty of murder on the grounds of his statement alone.

2.

> The learned Judge has in her Judgment stated that the defence took the Crown by surprise by raising its defence late, while the Crown had closed its case. It is the defence submission that the defence made an application for medical examination at the opening of the case.

3.

> The Learned Judge erred in distinguishing the case of Mosuoe Moteane from the present case."

[2] In argument before us Counsel for the appellant advanced only one contention viz. that the appellant should have been acquitted because he acted whilst in a state of what Counsel called "sane automatism" at the time he killed the deceased.

[3] The uncontested evidence established that the

deceased was killed by the accused. He had done so by cutting his victim's throat. The motive for the killing, according to a statement by the accused was that he had "killed the person who killed his father." According to PW1 - the witness to whom the appellant made the statement – the appellant was normal at this time and there was nothing strange about him. This evidence was confirmed by PW2.

[4] It should be noted that the appellant's grandfather had died in a motor vehicle accident in Gauteng and that the deceased was in no way responsible for his death.

[5] The defence applied for and was granted an adjournment before the trial to enable a psychiatrist to examine the appellant to determine his mental state. This was duly done and his report can be summarized as follows:

5.1 The psychiatrist observed no abnormal behaviour or activity. No thought disorder was detected and no perceptual disorders were reported. His cognitive functions were

within ordinary limits. No symptoms or signs of mental orders were detected.

5.2 The psychiatrist recorded that the appellant alleged that he had no memory of having stabbed the deceased. He did recall an argument with the deceased, that the latter drew a knife and that he was obliged to protect himself. The report by the accused to the psychiatrist also included the following: “After a few minutes he realized that he had a knife in his hand and (that) the deceased was on the ground”. This was interpreted by the witness as an allegation that for a few critical minutes during the struggle with the deceased the appellant claimed to have had amnesia.

5.3 The appellant also told the witness that the deceased had accused him (the appellant) of “pregnating” the deceased’s daughter and had put pressure on him to marry her. He admitted the relationship, but denied fathering the child.

5.4 The psychiatrist’s opinion was that there was

a strong possibility that the appellant was malingering, that is, that he was consciously simulating amnesia.

5.5 The psychiatrist was of the view that the appellant was not mentally ill at the time he committed the offence. Neither was he insane and he was fit to stand trial. He appreciated what happened at the time the deceased sustained the injuries he did.

[6] Mr. Lesuthu for the appellant sought to argue that despite this evidence the accused suffered from what he called “sane automatism”

[7] It should be pointed out that the appellant did not testify. Neither he, nor any witness gave evidence concerning this phenomenon and what it means. How, when and in what circumstances such a state of mind can be found to have existed or what impact it could have had on the conduct of this accused was never canvassed in evidence.

[8] The South African Court of Appeal has commented on

this defence and outlined the circumstances in and the extent to which such a defence can be sustained. See in this regard S v. Eadie 2002 (1) SACR 663 (SCA). See also Criminal Law Case Book; C.R. Snyman p. 127 – 138 and Principles of Criminal Law (3rd Ed. 2005), Jonathan Burchell pp. 150, 181 and 431 – 436.

[9] However as can be seen from the summary of the evidence, the appellant failed to adduce any evidence to substantiate any abnormality affecting his state of mind at any time and particularly not at the time of the commission of the offence.

[10] There was no appeal against sentence.

[11] For these reasons the appeal is dismissed.

[12] The Court once again records its concern that it took 9 years to bring the appellant to trial and that it is now 11 years since the offence was committed. Such delays are clearly unacceptable. See in this regard the comments of this Court in the case of S. v. Ketisi C of A (CRI) No. 9/06 in a

judgment delivered also at the current session of the Court of Appeal.

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J.H. Steyn
PRESIDENT

I agree: _____
M.M. Ramodibedi
JUSTICE OF APPEAL

I agree: _____
L. Melunsky
JUSTICE OF APPEAL

Delivered at Maseru this 20th day of October, 2006

For Appellant : Mr. K. Lesuthu

For The Crown : Mr. T. Mokuku