

CR/S/4/80

IN THE HIGH COURT OF LESOTHO

In the Matter of :

REX

Appellant

v

'MALEBOHANG MOTOAI

Respondent

REASONS FOR JUDGMENT

Filed by the Hon. Mr. Justice F.X. Rooney  
on the 10th day of July, 1980.

On the 10th January, 1980 the accused appeared before the magistrate at Quthing charged with the culpable homicide of one Motlatsi Motlatse on the 15th September, 1979. She pleaded guilty to the offence.

The prosecutor's statement revealed that the deceased was a miner on his way home to Dilli-Dilli. Four days before his death, he made the acquaintance of the accused and stayed with her on temporary basis. On the 13th September he left the accused taking with him a blanket. The accused searched for the deceased and found him at another house and demanded the return of her blanket. The deceased refused and went off to yet another house, followed by the accused. They quarrelled over the blanket. The accused attacked her erstwhile lover with a mine pick, striking him on the head with such force that she caused multiple fractures of his skull and damage to his brain which led to his death.

The accused asked for a lenient sentence on the grounds that she was the mother of a child of 8 who was living with her parents. The magistrate sentenced the accused to pay a fine of M200 or two years imprisonment in default of payment. He suspended one half of the sentence for 3 years on certain conditions. When the file came before me on review, I considered that the sentence imposed by the magistrate was inadequate in view of the brutal nature of the crime. On the facts the accused was fortunate to have escaped a successful prosecution for murder. The option of a fine in the circumstances implied a derisory view of the value of human life.

On the 18th February I made an order on review directing the magistrate to commit the accused to the High Court for sentence. The accused was present when the matter was heard before me on the 13th June, 1980. She displayed no remorse. On the contrary she expressed the view that she was justified in killing the deceased in order to recover her blanket.

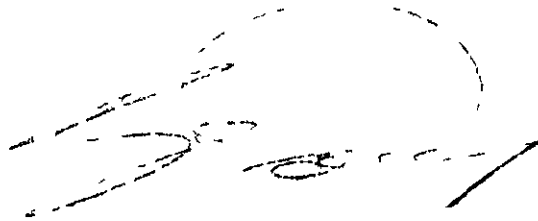
The magistrate had the power to sentence the accused to a maximum of two years' imprisonment. While I was satisfied that the sentence actually passed in the subordinate court was inadequate, I was unable to form the opinion that greater punishment should be inflicted for the offence than the magistrate had power to inflict (Section 288A of the C.P. and E. Proclamation).

In CRI S/5/79 Rex v. Mahooana (unreported) I held that Section 288A does not confer upon magistrates an unrestricted power to send persons to this Court for sentence and that an order under the section can only be made within the circumstances envisaged by it. In exercising its power of review under Section 69 of the Subordinate Courts Proclamation, this Court may not exceed the jurisdiction or power of the court whose proceedings are under review. 7

In the circumstances I decided not to proceed further with the committal for sentence, but, to make an order under Section 69(2) b(1) of the Subordinate Courts Proclamation and increase the sentence passed upon the accused by the magistrate in the first instance. The accused was sentenced to imprisonment for two years on the 13th June, 1980. I ordered that the fine of M200 should be repaid to the accused.

In making the revisional order increasing the sentence I was not unmindful of the difficulties which may arise if the accused decides to appeal against the severity of her sentence. I referred to this problem in Review Order 5/79 Rex v. Ts'ufu (unreported). In that case the accused had committed rape on a child of 8 years and the magistrate was directed to apply Section 288A because his powers of punishment were clearly insufficient to meet the justice of the case. But, where the sentence is increased on review by the High Court, an accused retains a right of appeal under Section 66 of the Subordinate Courts Proclamation. It does not appear to be just that such appeal should lie to the Court which has already increased the sentence. There is no right of appeal to the Court of Appeal against a sentence passed by the High Court in either its revisional or appellate's jurisdiction

(see Section 8 of the Court of Appeal Act). The anomaly could be cured by amending Section 8 of the Court of Appeal Act by adding to subsection (1) the words "except where such sentence has been increased by the High Court".

A handwritten signature in dark ink, appearing to read 'F. X. ROONEY', is written over a faint, circular stamp or watermark.

F. X. ROONEY

JUDGE

10th July, 1980.