

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

LISEMA MATHABA

Appellant

v

REX

Respondent

J U D G M E N T

Delivered by the Hon. Chief Justice,  
Mr. Justice T.S. Cotran on the 1st  
day of December, 1980

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I have granted this appellant leave to appeal against sentence out of time.

The appellant was convicted by a magistrate at Mokhotlong of culpable homicide (count 1) and of unlawful possession of a revolver contrary to s.3(1) of the Internal Security(Arms & Ammunition) Act 1966 (count 2). On the first count he was sentenced to three years imprisonment half suspended for three years on condition that he be not convicted of an offence involving violence to the person during the period of suspension, and on the second count he was sentenced to a fine of M200 or six months imprisonment in default of payment, sentences to run "concurrently". This was on 14th February 1980.

The case file came before my brother Rooney J on review on the 26th March 1980. For reasons he gave, with which I respectfully agree, the condition of suspension on count 1 was altered as therein and thereafter described and the sentence on count 2 was reduced to a fine of M50, failing payment of which the appellant would be dealt with under s.298(2) and s.299 of the Criminal Procedure and Evidence Proclamation. (Review Order 5/80 - unreported). The learned Judge, after reviewing the facts, which were rather unusual with many mitigating features, commented as follows on the sentence the magistrate had imposed on culpable homicide:

"This is a severe sentence but I am not prepared to alter it on review".

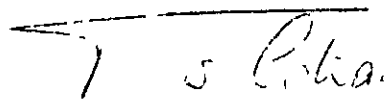
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The learned Judge no doubt implied that if he had been seised of the case by way of appeal he may have been persuaded, after hearing argument, that the sentence was on the high side. The argument was now addressed to me. Apart from what Rooney J had mentioned it has now further transpired that the unfortunate deceased was in fact related to the appellant, a trader of 38 years standing, whose shop had been raided by thieves on a previous occasion, whose nightwatchman was away ill when the deceased and his friend lay in wait for the appellant's daughter to emerge that night and who, on learning of the identity of the deceased, suffered shock contrition and remorse. The circumstances of this killing were not very much worse than in R. v. Bane CRI/REVIEW/8/80 - unreported, where sentence was postponed on conditions.

I have conferred with my brother Rooney J on this aspect, and he agrees with me that justice requires that the appellant ought not to serve more than one year substantive imprisonment for the crime of culpable homicide. The sentence is therefore altered to read :

"Three years imprisonment two years of which are suspended for three years on condition that the accused is not convicted of a crime of violence in which a firearm is used during the period of suspension".

The appellant has been committed to prison on the 14th February 1980 so he has already served 9½ months. The effect of this alteration should enable the prison authorities to release him now if he qualifies for remission for good conduct and if he also pays the fine of M50 on count 2 in order to avoid further proceedings against him under the provisions of s.298(2) and s.299 of the Criminal Procedure and Evidence Proclamation.

  
CHIEF JUSTICE  
1st December 1980

For Appellant : Adv. G.N. Mofolo  
For Respondent: Mr. Mdhluli