

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MOTEBANG KHOABANE

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 19th day of December  
1980  
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The appellant was convicted by a Resident Magistrate at T.Y. of the crime of culpable homicide. He was sentenced to 3 years' imprisonment.

He is now appealing (in person) against his conviction but apparently not his sentence. He lists his grounds as follows :

1. My conviction was bad in law because the witnesses had never saw me stabbing the deceased with a knife and the crown witness stated that.
2. I am dissatisfied because I was badly convicted in that I was convicted by false evidence because the crown-witness even said he saw me looking at each other with the deceased and he even said the deceased expelled him that is to say he doesn't have any knowledge and further he said he was told by the deceased that I have stabbed him that's why I said there's no truth.
3. I am also dissatisfied in that this crown-witness the way he had stated he was too near he could have seen when I stab the deceased.
4. I am also dissatisfied when the Court erred in accepting the evidence of PW 2 who never saw when we were fighting who adduced that he knew when we were discussing about money in the third month this year that is to say he doesn't know about our fight.
5. My dissatisfaction again is that the Honourable Court never accepted to have my defence witness who will testify that during the month of March 1980 I was not present I was at Mokema where I am working.
6. The judgment is incorrect because the deceased lay-way and faught me and did not know what he had taken and I was defending myself as I had no knowledge what he had taken.

7. The Honourable Court even said I am the one who had killed along the way because he could lodge a case against me."

I am at a loss to understand what he is trying to tell the Court but if his defence was one of self-defence the Crown has been able to negative its existence. The appellant had said : (in chief)

"It is true deceased had been killed by me with a knife. I had no intention to kill deceased with a knife. On 4/4/80 I was at 'Mathakali's home. The deceased reached me at that home. It was almost at night. The deceased seated for a while and 'Mathakali expelled him. We finished our beer scale and went out following one another with 'Muso. I went first and found deceased with Seotsanyane on the upper corner of the house. Deceased attacked me with fists to a lower corner. I stabbed him with a knife then. 'Muso asked why we fought. Deceased walked remarked I stabbed him with a knife. I walked away to report to my family. I have knowledge of the meaning spoke of by one witness I was absent at home in March and was at Mokema. In the circumstances I have remorse so apply for Court's clemency".

No element of self-defence arises. All what can be said is that there appears to have been a fair amount of drinking that evening before the owner of the house expelled the appellant and the deceased.

The appeal is dismissed. The sentence is perhaps on the high side but the magistrate gave cogent reasons why he imposed it.

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CHIEF JUSTICE  
19th December, 1980

For Appellant: In Person  
For Respondent: Adv. Khaue