

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

LETLATSA RAMALEFANE

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 30th day of December  
1980

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The appellant was convicted by a magistrate at Mafeteng of the offence of culpable homicide and was sentenced to two years' imprisonment half of which sentence suspended for 3 years on certain conditions.

The deceased, who worked on the mines, and who had a couple of weeks or so previously to the incident giving rise to these proceedings returned home to Lesotho, had believed, rightly or wrongly, that the appellant had impregnated his wife. The appellant, who was himself married with two small children, denied the accusation on oath.

There were three eye-witnesses to the incident: Mahlomola Sehloho (PW1) who was related to the deceased; and Motsamai Nonyana (PW2) and Mpakapaka Morake (DW2) who were not.

The appellant had pleaded self-defence. In his testimony he alleged that the deceased came to his brother's home to attack him and was armed with a stick an iron rod and a knife. He threw a stone at the deceased and then hit him with the blunt side of an axe and when thus injured he stabbed him on the back. He added that the fatal wound (on the chest) which caused the deceased's death was not inflicted by him, but by the deceased when he fell on the pointed edge of iron rod he was carrying.

The magistrate, in a careful Judgment, did not believe

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the appellant's version that the deceased had impaled himself on the iron rod. I think the magistrate was perfectly justified in this finding. According to all three eye-witnesses, including the witness who gave evidence for the defence, (p.18 lines 2, 3 and 4) the appellant stabbed the deceased fatally with a knife whilst the latter was either prostrate or kneeling down after receiving earlier injuries, and it was this fact that clinched the case in favour of the Crown. The magistrate quoted the case of R. v. Mathlau 1958(1) S.A. 359(A.D.). The appellant himself admits that he stabbed deceased (but on the back) when deceased was blinded by blood pouring down his face from the blow inflicted on the deceased's head with the blunt edge of the axe.

The magistrate wrote:

"According to the Crown evidence though the deceased hunted for the accused and armed himself with a stick and an axe iron rod; (and he should have added also a knife) it seems the accused was the one who first attacked the deceased etc...."

This was literally true but the deceased's intentions became absolutely clear well before that and the appellant's act should not be taken in isolation of other events. It is common cause that since the morning of that day the deceased had been looking for the appellant everywhere in the village. The deceased was heard telling people "Today, if I do not die someone will die". He fortified himself with drink, and although there are minor variations in the testimony of the witnesses there is little doubt that the deceased was the initial aggressor. He first went to appellant's parents home and not finding him there assaulted his mother and apparently caused damage to property. When the appellant went back to his parents home he found the bed uncovered and the door cracked. He thought that his elder brother's home was safer because it was in the open and he could see all round if someone came to attack him. The deceased found out where the appellant had gone and approached the house accompanied by a number of persons, one being a brother (or a close relative) Mahlomola Sehloho (PW1) whose evidence was slanted in favour of the deceased. It may be that the others who accompanied the deceased were trying to restrain him, but there was no way in which the appellant could guess this and he may well have been truthful when he said that it seemed to him that the crowd, which included women from the deceased's

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family, had come to assist the deceased. The appellant says (supported by Morake - PW2) that on his way to his brother's home a crowd had formed on the hillock and the deceased shouted at him, in anger and in a menacing manner, to stop as he wanted to "talk" to him about his "mistake". When he refused to stop the deceased came forward, armed as aforesaid, and entered into the appellant's brother's compound and challenged him to a fight. It was then that the appellant threw the stone at the deceased and a few moments later hit him on the head twice with the axe. I agree with the magistrate, however, that after that serious danger to the appellant had passed and that the subsequent stabbing on a vulnerable part of the body was in excess of what was necessary. I think that the conviction was technically correct and is confirmed.

I now come to the question of sentence. Adv. Ramodibedi says that appellant had spent sometime in custody and that the whole of the sentence ought to have been suspended. Now a sentence is at the discretion of the magistrate and an appellate tribunal should not lightly disturb it. In view of the magistrate's comments earlier referred to (that the appellant attacked first) I rather fear that he did not take sufficiently into consideration the mitigating factors surrounding the appellant's plight.

I would suspend the whole sentence on the same conditions and to this extent the appeal against sentence is allowed.

CHIEF JUSTICE  
30th December, 1980

For Appellant : Adv. Ramodibedi  
For Respondent : Adv. Khaue