Privy Council Appeal No. 28 *of* 1953

Thabo Meli and others - - - - - - - - *Appellants*

v.

The Queen - - - - - - - - - - - *Respondent*

FROM

THE HIGH COURT OF BASUTOLAND

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 13TH JANUARY, 1954

Present at the Hearing:

THE LORD CHIEF JUSTICE OF ENGLAND
(LORD GODDARD)
LORD REID
MR. L. M. D. DE SILVA

[*Delivered by* LORD REID]

The four appellants in this case were convicted of murder after a trial before Sir Walter Harragin, Judge of the High Court of Basutoland, in March, 1953. The appeal which has been heard by this Board dealt with two matters: first, whether the conclusions of the learned judge on questions of fact were warranted; and, second, whether on a point of law the accused are entitled to have the verdict quashed.

On the first matter, there really is no ground for criticising the learned judge's treatment of the facts. It is established by evidence, which was believed and which is apparently credible, that there was a preconceived plot on the part of the four accused to bring the deceased man to a hut and there to kill him; and then to fake an accident, so that the accused should escape the penalty for their act. The deceased man was brought to the hut. He was there treated to beer and was at least partially intoxicated; and he was then struck over the head in accordance with the plan of the accused. Witnesses say that while the deceased was seated and bending forward he was struck a heavy blow on the back of the head with a piece of iron like the instrument produced at the trial. But a post-mortem examination shewed that his skull had not been fractured and medical evidence was to the effect that a blow such as the witnesses described would have produced more severe injuries than those found at the post-mortem examination.

There is at least doubt whether the weapon which was produced as being like the weapon which was used could have produced the injuries that were found, but it may be that this weapon is not exactly similar to the one which was used or it may be that the blow was a glancing blow and produced less severe injuries than those which one might expect. In any event, the man was unconscious after receiving the blow, but he was not then dead.

There is no evidence that the accused then believed that he was dead, but their Lordships are prepared to assume from their subsequent conduct that they did so believe; and it is only on that assumption that any

statable case can be made for this appeal. The accused took out the body, rolled it over a low krantz or cliff, and dressed up the scene to make it look like an accident. Obviously they believed at that time that the man was dead, but it appears from the medical evidence that the injuries which he received in the hut were not sufficient to cause the death and that the final cause of his death was exposure when he was left unconscious at the foot of the krantz.

The point of law which was raised in this case can be simply stated. It is said that two acts were done:—first, the attack in the hut; and secondly, the placing of the body outside afterwards—and that they were separate acts. It is said that, while the first act was accompanied by *mens rea*, it was not the cause of death; but that the second act, while it was the cause of death, was not accompanied by *mens rea*; and on that ground it is said that the accused are not guilty of murder though they may have been guilty of culpable homicide. It is said that the *mens rea* necessary to establish murder is an intention to kill and that there could be no intention to kill when the accused thought that the man was already dead: so their original intention to kill had ceased before they did the act which caused the man's death.

It appears to their Lordships impossible to divide up what was really one series of acts in this way. There is no doubt that the accused set out to do all these acts in order to achieve their plan and as parts of their plan; and it is much too refined a ground of judgment to say that, because they were under a misapprehension at one stage and thought that their guilty purpose had been achieved before in fact it was achieved, therefore they are to escape the penalties of the law. Their Lordships do not think that this is a matter which is susceptible of elaboration. There appears to be no case either in South Africa or England, or for that matter elsewhere, which resembles the present. Their Lordships can find no difference relevant to the present case between the law of South Africa and the law of England; and they are of opinion that by both laws there can be no separation such as that for which the accused contend. Their crime is not reduced from murder to a lesser crime, merely because the accused were under some misapprehension for a time during the completion of their criminal plot.

Their Lordships must, therefore, humbly advise Her Majesty that this appeal should be dismissed.

(20236) Wt. 8267—824 100 2/54 D.L.

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v.

THE QUEEN

DELIVERED BY LORD REID

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