

IN THE COURT OF APPEAL FOR BOTSWANA

Criminal Appeal No. 14 of 1983

In the matter between:

- |                   |               |
|-------------------|---------------|
| 1. MOSOTHO MASINA | 1st Appellant |
| 2. REX MOGOTSI    | 2nd Appellant |

and

THE STATE

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ORDER OF THE COURT

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Coram: Maisels, P  
Kentridge, JA  
Amissah, JA

MAISELS, P

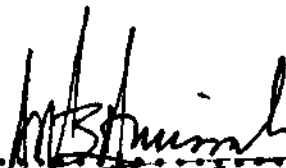
The law requires that the State has to prove the guilt of a person in any case such as this beyond reasonable doubt. The State can only prove the guilt of the accused persons by evidence that the Court may properly receive. In the judgment of this Court, the State has failed to prove by evidence which could properly be considered by this Court, that you are indeed guilty of the crime with which you have been charged. I wish to emphasize that although we have come to that conclusion, we are by no means saying that you are innocent. We are merely saying that, and I repeat, that the State has failed to prove by admissible evidence that you killed the deceased. Full reasons for our coming to the conclusion that you must be found not guilty will be given later.

In view of the fact that you have been, as it were, under the shadow of death for a year, we have decided to give our decision now and to give our reasons later.

The result, therefore, is, the appeals of both accused are allowed and the convictions and sentences are set aside.

  
.....  
I. A. MAISELS  
JUDGE PRESIDENT

I agree: .....  
S. W. KENTRIDGE  
JUDGE OF APPEAL

I agree:   
.....  
A. N. E. AMISSAH  
JUDGE OF APPEAL

LOBATSE  
6th December 1983