

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

1. RAMARE MASILO
2. TSABELLO MASILO

J U D G M E N T

Delivered by the Hon. Chief Justice, Mr. Justice
T.S. Cotran on the 10th day of March, 1982

The two accused persons Ramare Masilo(A1) and Tsabello Masilo(A2) are indicted before me on a charge of murdering Michael Thupa (the deceased) on or about the 4th day of March 1981 at or near Kamoho in the district of Butha-Buthe. A2 is Al's nephew.

It is common cause that the deceased died probably instantly from a single stab wound in the chest which penetrated into the trachea defined as the "principal air passage of body from larynx to the bronchial tubes".

It is also common cause that Al's wife Matsipa had on at least one occasion previously to the time that gave rise to these proceedings, removed from her matrimonial home and had gone to Kamoho village. It is reputed that Matsipa was the "niece" of the deceased who lived at Kamoho. I say "reputed" because there is no direct evidence of such a relationship. Al did not apparently know him. My assessors think that he was a far removed maternal "uncle" and they seem to think that it is possible that he had not been involved in the marriage arrangements between Al and his wife Matsipa. Be that as it may be deceased put up Matsipa with his widowed daughter in law Matsosane Thupa (PW5) who had rented a room in a block consisting of two rooms some distance from the house in which he lived. She stayed there for about a week previously. Then Al came and fetched her. It

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is certain that Matsipa left her matrimonial home with her child for a second time because of some disagreement with A1. We have only A1's word that he had not given Matsipa offence that warranted her leaving home to go and seek refuge in Kamoho village.

The evidence is to the effect that on that 4th March 1981 Matsipa arrived at about 5.30 p.m. with her child and put up at Matsosane (PW5). Shortly afterwards A1 arrived with A2. We have more than one version of what happened after their arrival but there is no doubt that A1 and A2's object was to take away, by force if necessary, his wife Matsipa and his child back home and that Matsipa, at any rate initially resisted, saying she does not want to go back to a "Tortoise" - My assessors have not heard of the expression but they seem to think, and I agree, that it is a derogatory term. Present at the time were three women Machaka (PW1) Masefako (PW2) and Matsosane (PW5) the deceased daughter in law with whom A1's wife put up.

Whilst A1 was chasing and assaulting his wife and terrorising the other women above mentioned, Machaka's husband whose name was Sam (he did not give evidence) arrived and tried to intervene. He too was assaulted. The upshot was that the women and Machaka's husband Sam fled the homestead in different directions.

Masefako (PW2) testifies that she ran to the home of Mamosela where the deceased stayed which was in an adjacent village situate half a kilometer away (pointed) to inform him that his niece Matsipa was being assaulted by her husband who had come to take her away by force. She found the deceased asleep. He was a man of sixty. He was woken up and urged by Mamosela to go and intervene. Mamosela was said to be an elderly woman with bad eyesight. The deceased got up, and took hold of small stick, and started walking towards Matsosane's house. He had a choice of several paths. He had to traverse (before reaching his daughter in law's house at Kamoho) open country.

If I may digress for a moment here, Machaka, who had fled her home, stood on a hillock, but could see the proceedings below. A1 finally got hold of his wife Matsipa. The last she saw of them was A1 driving his wife and A2 carrying the child towards the fields in the direction of the house where the deceased stayed.

To resume: Masefako's followed the deceased towards her house. She says she was following the same path the deceased

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took and Matsosane, who came to raise the alarm as well, followed her with Mamosela the lady with poor eyesight. It was getting dusk by then. Masefako saw A1 driving his wife and A2 carrying the child and they met the deceased face to face. Masefako testifies that she heard Matsipa appealing to the deceased saying: "Father Michael please help me I am being assaulted". A1 shouted to his wife "So you you already know the names of those ruffians in this village! Is he (meaning the deceased) the person with whom you are staying?" to which question Matsipa replied that he was. The last thing Masefako heard was A1 telling A2: "Stab him with a knife" and the deceased protesting "Why what have I done?"

Masefako ran to her home to raise the alarm and on her return with village help the deceased's body was at about the same spot where the encounter between A1 and A2 (on the one hand) and the deceased (on the other) had taken place.

A1 testifies that when he found his wife absent from the matrimonial home on that day he proceeded with A2 to Kamoho to bring her back home. He knew she would be there. He admits assaulting her at Matsosane's house. She ran in the direction of the fields and he gave chase. A2 followed behind some distance away carrying the child. He caught up with her and thrashed her again. As he was doing so he suddenly felt someone striking him on the head from behind. He let go his wife and looked back and saw a male adult (the deceased) who was a stranger to him. He turned to face the deceased who pushed him and was aiming to strike again. A1 says he took out his knife from his pocket, unclasped it with his teeth, and stabbed the deceased on the chest. The deceased fell. He caught his wife and brought her back to where the deceased had fallen and said to her "Do you realise I inflicted injuries on this man?" It was only then that she (Matsipa) told him that that man was the person with whom she was staying.

There is little doubt that A1 was labouring under the belief that his wife was having an affair with someone in Kamoho. He says he had no particular person in mind. According to Machaka A1 said to A2 when her husband Sam arrived "Stab this man, he is the one having an affair with my wife". I must add that there is not an iota of evidence to support A1's suspicions against Sam nor is there evidence that the deceased, who was considerably older than Matsipa, had an affair with her either.

/A1 and A2

A1 and A2 reported to Butha-Buthe charge office the same evening about 8.30 p.m. A1 said he stabbed a person whom he did not know, but with whom his wife had been staying, and handed the officer (L/Sgt Motlalane PW3) a broken blood stained knife (Exhibit 1) and the broken stick (Exhibit 2). This is a very light stick. A2 explained to the officer that the stick was carried by the man (deceased) with whom A1's wife was staying. A1 from the witness box says that the stick was his and was broken when he assaulted his wife in or around the house when chasing her. Machaka says the deceased, when he went to intervene, carried a light stick "similar" to Exhibit 2 but was not sure if it was in fact Exhibit 2.

There is no evidence that A2 (though he had made common cause with A1 to retrieve his wife by force), made no common cause with him in killing the deceased. A2 must therefore be acquitted. A1 put up a feeble case of self-defence and this must be rejected as utterly fanciful. He never complained to the police about injuries and they noticed none. The officer who visited the scene and saw the terrain where the body was lying noticed no evidence of a struggle in the vicinity.

We are not sure, however, in view of the circumstances, that A1 had the subjective intent to kill. The encounter with the deceased was a chance one, he was in rage against his wife, and we are not satisfied that he formed a specific intent to kill.

We find A1 guilty of culpable homicide.

We find A2 not guilty and he is discharged.

My assessors agree.

SENTENCE: 7 years imprisonment of which 3 are suspended for 3 years on condition that accused be not convicted of an offence involving violence to the person in which he receives a sentence of more than six months imprisonment.


CHIEF JUSTICE
10th March, 1982

For Crown : Mr. Khauoe
For Defence: Adv. Monapathi