

IN THE HIGH COURT OF LESOTHO

In the matter of :

REX

v

MATIIBA MAZLENGANE

REASONS FOR SENTENCE

Dictated on Tape by the Hon. Chief Justice
Mr. Justice T.S. Cotran on 19th August 1982

The accused was indicted before me on 17th August 1982 on two counts of murder and one count of assault with intent to cause grievous bodily harm. She offered to plead guilty to Culpable Homicide on both the first two counts and to assault common on the third count. The Crown was prepared to accept her plea of guilty to Culpable Homicide on both counts but not her plea of guilty to assault common.

After a period of consideration the Court accepted her plea in respect of count II and entered such a verdict after the Crown outlined the case but not in respect of count I and III in which I directed that the trial should proceed. After this ruling the accused changed her plea to one of guilty on count III (assault with intent to do grievous bodily harm) but not on count I. A verdict of guilty as pleaded was accordingly entered on count III.

The defence admitted all the evidence taken on deposition before the committal magistrate and called the accused to testify. At the end of the case the court found the accused guilty of Culpable Homicide (not murder) on count I as she had originally intended to plead.

Sentences of imprisonment were passed on all three counts but these were wholly suspended on certain conditions.

The reasons for the relative leniency meted to the accused ought to be given. She is aged 30 with four children

/and

and married to a rather lazy husband who did not work. She has for some years been supporting him and the children by eeking a small income from the sale of vegetables and fruits. Even then she was unable to cope and had to send the two elder children (aged 14 and 12) to her own parents in the mountains.

Her husband is, and had been, unfortunately, a ladies man and there had been problems between them on this score the last of which occurred about one week prior to the incident giving rise to these proceedings when she caught him with an unknown woman in her house at night. The woman fled. The accused left the matrimonial home and repaired to her aunt in Alwynskop. A day or two later her husband sought her forgiveness and she promised, reluctantly if I may add, to return home after a few days.

On her return home on the 25th May 1981 she found a strange woman at her home and she learnt that her name was Baleka (the victim in count I) and she was told that her nephew Moxenezela, a young man living in the same compound with her, and whom she helped bring up, was the person who had abducted Baleka from her parents with the intention of marrying her. She accepted this as the true situation but on the following day she heard village gossip. She ignored this. However in the evening of the same day she was cutting vegetables with a small knife (Exhibit A) in her house; her youngest child aged 2 and 8 months was nearby. She was called to the court yard outside. Her husband, his mother Noamen, (accused's mother-in-law) and her aunt Xhasiwe (Noamen's sister and mother of Moxenezela and the victim in count II) were there. In the presence of her husband, they broke to her the news that Baleka was in fact abducted not by her nephew Moxenezela but by her husband. She said the knife was in her hand because she did not want to leave it next to the child who might injure himself with it when she was called to the forecourt.

After the news was broken to her she went beserk. She first stabbed her husband Ngakobane (count III) then went back into the house and stabbed Baleka four times (count I) which resulted in her death a day later, and when her aunt Xhasiwe attempted to intervene she received one stab wound in the heart and died instantly.

In her evidence the accused says she just did not know what she was doing - indeed with regard to her aunt

/Xhasiwe

Xhasiwe she does not remember stabbing her at all, but she was told later that she stabbed Xhasiwe when the latter tried to calm her down.

My assessors and I have no doubt at all that in the circumstances of this case the Criminal Law (Homicide Amendment) Proclamation 42 of 1959 is applicable and she is entitled to its benefit and her crime is reduced to Culpable Homicide on the grounds of provocation.

In order to assess the sentence to be imposed on her the Court called her husband. He admitted he was rotten, confirmed that the accused had never exhibited any violent traits before, that her story to Court was true, that his evidence at the Preparatory Examination that Baleka was abducted by his nephew was not true, and finally promised the Court to turn a new leaf. He wants his wife back.

Despite some of the risks involved in a wholly suspended sentence, we have been so impressed with the accused's integrity that we were prepared to take a chance to enable her to go back to her home and resume normal life. We have taken into account that she had been in custody for nearly 15 months. We trust the accused will not let us down and her husband will do no act that may result in a repetition of this tragedy.

CHIEF JUSTICE
19th August, 1982

For Crown: Mr. Kabatsi

For Defence: Mr. Mlonzi