

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

TLELIMA LEHOAQA

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P. Mofokeng  
on the 16th day of September, 1982.

The accused is charged with the crime of murder, it being alleged that on the 20th day of September 1981 he intentionally killed one Tseliso Letela (hereinafter referred to as the deceased). The accused pleaded not guilty.

It was admitted, on behalf of the accused and accepted by the Crown.

- (a) that the deposition of Dr. Park at the preparatory examination, together with the post-mortem report and the cause of death be evidence at this trial.
- (b) that it was the accused who fired the gun (exhibit that caused the injuries found on the arm of the deceased as deposed to by doctor Park in his preparatory examination.
- (c) that the gun (exhibit 1) is the property of the accused.
- (d) that the identity of the deceased is accepted and consequently the depositions of Motuba Molisa are evidence at this trial.

The evidence of the Crown in a nutshell is : At about sunset, on the date already mentioned, Motsokotsa Ramotho (PW.,  
/arrived

- (d) that the identity of the deceased is accepted and consequently the depositions of Motuba Molisa are evidence at this trial.

The evidence of the Crown in a nutshell is : At about sunset, on the date already mentioned, Motsokotsa Ramotho (P.W.1) arrived at the house of Ntsane Mokoteli (D.W.2) where hops was being sold. He entered the house. He was shortly joined by the deceased. They drank. There were also many other people who came for the same purpose. At dusk they went out carrying their scales of hops. They left behind many people who were drinking and there was blaring type of disco music usually played at such places. Incidentally, Ntsane Mokoteli says that the drinking people were very quiet. To continue, Motsokotsa Ramotho and deceased stood in the forecourt but near the cattle kraal. There were two people sleeping on the hardground who, apparently, had started their drinking session, too early.

While standing there and enjoying their hops, accused arrived. He inquired as to who they were. There was no reply. He asked again directing his inquiry to Motsokotsa Ramotho. He obliged. At that stage it would seem the deceased was now standing behind Motsokotsa Ramotho, for the accused said to him he should stand aside so that he could shoot the deceased. Motsokotsa Ramotho did not move because he was petrified with fear. The accused then angrily said to him : "Your mother's vagina. I say you should stand aside so that I should shoot this person." Still he did not move; instead the deceased ran and a

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shot rang as the deceased was about to take a turn towards the back of the house. I believe this is the time deceased left his bayonet and a hat which were only fetched the following morning by Qhabaphosela Rakabaele (P.W.2),

The witness went to Ntsane Mokoteli to make a report. The latter went out and found nobody behind the house. This was not surprising because both the deceased and the accused disappeared behind the house and must have run away, each for a different reason.

Previously the accused had complained to Motsokotsa Ramotho that the deceased was in love with his wife. The latter said he knew about this love affair. But it was put to him that he was not telling the truth. No such a complaint had ever been made to him. However, Motsokotsa Ramotho was the only person who knew about this love affair. The other witnesses knew nothing about it.

The accused went to his home and left the gun (exhibit 1) and the spent cartridge (exhibit 3) and passed on to his father. He made a report. He then left for Setsoafa Chechela (P.W.5) who is his cousin, and there volunteered an explanation to him and said that he had shot the deceased because the latter was in love with his present wife.

It should be stated here that it is not disputed that the deceased was in love with accused's wife by the name

/of 'Mampho

of 'Mampho. Crown witnesses, including the deceased's own father (P.W.3) agree with this.

Accused went to Sefikeng police post and handed exhibit 4. The following day detective Ntlaloe (P.W.7) left with the accused and at the accused's home was handed exhibit 1. He examined the forecourt for any signs of a struggle. He saw none. He examined the door but it was still intacked. Inside the house there were no signs that any fight had taken place. Every item had been neatly put in its place and with neatness. Thereafter accused then took him to where he said the fight took place. This was at the rocks. After examining the place and its vicinity he found no blood. He informed the accused who then said he had lied. He then took the witness to Seana's place which is about 300 - 400 yards from the deceased father's house. This he said is where the fight took place. In the presence of the accused, Motsokotsa Ramotho, pointed a spot near the kraal where he stood with the deceased when the accused arrived, but could not point the exact spot where the deceased was shot.

The accused gave evidence under oath simply stated that all the Crown witnesses who told the Court that he had said he killed the deceased because he was in love with his wife, 'Manthabiseng, were being untruthfull. All that happened is that at about midnight he was woken up by the presence of two people in house who had kicked opened the door. They ran out when they saw that he had got up. He took his gun and chased after them. His aim was only to

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identify them. They ran on the edge of the cliffs until he was close to them. They were near a rock. One on each side. He inquired as to what their intention was. There was no reply. He then noticed that the deceased held a stone in his right hand and a sword in his left hand. The other person held a stick. The deceased threw a stone at him and when the deceased wanted to get hold of the sword with his right hand he shot the left arm. Meanwhile the other person was trying to gather stones from the ground. After the shooting they ran away. But to Motsokotsa Ramotho it was put to him that accused would say to the Court this is how it came about that he fired a shot at the deceased :

"It was at the time you (Motsokotsa) threw stones at him (accused) that he shot the deceased on the left arm.

Answer : No.

It was after this that deceased said to you :

"He has shot me in the left arm."

Answer : No.

It was at this stage that you ran in the direction of Seana Hoeane." (This is apparently where Ntsane Mokoteli also lived and worked).

Accused said he had shot the deceased because the latter and Motsokotsa Ramotho had fought with him.

He said that the deceased had been in love with his wife, 'Mampho. He had caught them inside the house and had made such noise that the whole village woke up and came to the scene. The deceased was reprimanded by his father

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(P.W.3). He then expelled 'Mampho. This happened about two to three years ago. Now he says the deceased had an affair with his present wife. They even left together for Maseru. He came to Maseru and found his wife working and not living with the deceased. He subsequently lived with her at home and was living with her when the present incident occurred.

Accused called Ntsane Mokoteli to give evidence on his behalf. Ntsane Mokoteli told the Court that the deceased and Motsokotsa Ramotho were at his house drinking hops. After a time they left. They did not hold any scales of hops when they left. At about 3 a.m. Motsokotsa Ramotho entered his house and made a report. Since the previous evening there had been no noise in his house. People drank in silence. Immediately after the report he went out. There was nobody. Under cross-examination he conceded that he had been playing records and the sound of music was very loud indeed. He said that Motsokotsa Ramotho had said to him that the accused was chasing him with a gun. He was then shown a sworn statement he had made to the police on the 21st September 1981 and signed by him. He admitted his signature thereon and that it had been read back to him. In it he had said that the accused "has chased Tseliso with a gun behind my house near the fence."

The Crown witnesses were candid and I detected no sign of unfairness or animosity towards the accused nor were they biased in favour of the deceased. I particularly observed Motsokotsa Ramotho when he was confronted with the

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version that the accused would later tell the Court. He appeared most surprised and his denials were equally emphatic. The accused, himself, conceded that he could think of no reason why his own relation, Setsoafa Chechela (P.W.5), would come and tell this Court a lie about him if he said the accused had told him that he had shot the deceased because the latter was in love with his wife. The accused first lied to the detective about the place where the shooting took place. The place he lied about was at the rocks where he said the deceased and Motsokotsa Ramotho threw stones at him. He then took the detective almost behind Ntsane Mokoteli's (Seana's) house. He did not dispute the various spots pointed out by Motsokotsa Ramotho such as where they stood with deceased when accused arrived. Accused began to lie deliberately about being assaulted by the detective but conceded that he never instructed his counsel about it.

In my view there was never any throwing of stones at the spot where the rocks are situated. Accused's counsel, very fairly, conceded this. Accused shot the deceased in the manner deposed to by Motsokotsa Ramotho.

Now the accused does not drink, but he chose to go to a drinking place. The reason seems obvious. He knew that the deceased had arrived and as a lover of hops he would get him there. He would go there under cover of darkness but the urge to revenge was too much. He could not wait. He coldly shot the deceased, not caring whether he caused

his immediate death or not. His gun (a shotgun to be precise) was loaded with a cartridge which is used in killing big game. I do not think man can be classified as such. His actions were those of a man who had hunted his man and had got him cornered. If a man says he wishes to shoot another what does he think will happen to the man he has caused an injury? A gun, whatever its make, is a lethal weapon. Accused told Motsokotsa Ramotho to step aside as he wished to shoot the deceased. When his order was not obeyed he issued insults. He showed determination to seriously injure the deceased. Moreover, he took two cartridges and as he said, under oath, if he had missed with the first one he would have used the second. After the shooting he says he was felt satisfied.

All the actions of the accused point to the fact that he had the intention to kill the deceased. When the accused shot the deceased he had the desire to kill him. There was no sudden provocation as governed by the Criminal Law (Homicide Amendment) Proclamation 1959. (See Rex v. Lira Moleleki, 1980(2) L.L.R. 441 at 452). If there had been any provocation at all, the accused had had ample time to cool off. The accused, therefore, clearly displayed an intention to kill the deceased.

In the result the accused is found guilty of the crime of murder.

My assessors agree with the findings of the Court.

For the Crown :Mr. Kalamathan  
For the Defence :Mr. Matsau

  
J U D G E.



EXTENUATING CIRCUMSTANCES.

The onus is on the accused of establishing the existence of extenuating circumstances. This is on a balance of probabilities. The Test to be applied is subjective.

The accused may lead evidence at this stage specifically directed at this inquiry. But in many cases the accused chooses not to do so and argues that the evidence at the trial also discloses extenuating circumstances. Accused has chosen the latter course. He is perfectly entitled to do so.

There is evidence that the deceased had been in love with the accused's wife 'Mampho. There is also evidence, however slender, that he was also in love with accused's present wife. Accused had not caught the deceased with his present wife but the suspicion was there. He had made a report about it to Motsokotsa Ramotho. To his cousin Chechela he had said that he had shot the deceased because the latter was in love with his wife. He foolishly denied these reports but they were true. That is what was going on in the accused's mind. He believed that the deceased was determined to break his family life. He had to destroy the deceased. That is why I referred to the killing as a revenge killing. The deceased had done and doing the accused great injustice by breaking up his family in such a shameful manner.

The dolus in this case was eventualis and not directus.

My assessors and I find that there are therefore extenuating circumstances.

/SENTENCE

SENTENCE

Courts do not countenance self-help for that will lead to chaos. You must be severely punished.

Taking your personal circumstances and the general disregard to human life in this country my assessors and I have agreed that your sentence shall be 10 years' imprisonment.

*W. J. Miller*

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