

IN THE HIGH COURT OF LESOTHO

In the Matter of

R E X

v

ALPHONSE LIKOTSI

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 22nd day of February, 1983.

The accused appeared before me charged with murder, it being alleged:

"In that upon or about the 1st June, 1982 and at or near Kolonyama in the district of Leribe, the said accused, acting unlawfully and with intent to kill, did assault 'Mamokotjo Likotsi and inflict knife wounds upon her from which the said 'Mamokotjo Likotsi died at Kolonyama on the 1st June, 1982."

When the charge was put to him, the accused pleaded:

"I am guilty but with reasons."

Mr. Matsau who represented the accused in this matter informed the Court that the plea as tendered by the accused was in accordance with his instructions and that the reasons referred to by the accused in his plea would be disclosed in the course of his address in mitigation. I directed that those reasons (if any) should be disclosed as they might have a bearing on what accused's correct plea was. Wherefor, the accused explained that the reasons he had in mind were that he had long been warning his late wife, 'Mamokotjo Likotsi, to stop her love affair with a certain man called Martins. In 1980 his wife (deceased) gave away his blankets to Martins. He actually saw the blankets being hanged on a fence, for drying, at the home of Martins. When he (accused) questioned her about those blankets, the deceased told him that she had given the blankets to Martins.

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In my view, the reasons disclosed by the accused did not affect, in any way, his plea of guilty and it was accordingly entered as pleaded.

Mr. Kabatsi, who appeared on behalf of the Crown, accepted the plea. As has already been pointed out, the accused was facing a charge of murder. Section 240 (1) (a) of the Criminal Procedure and Evidence Act, 1981 provides :

"(1) If a person charged with any offence before any court, pleads guilty to that offence or to any offence of which he might be found guilty on that charge, and the prosecutor accepts that plea, the court may -

(a) if it is the High Court, and the person has pleaded guilty to any offence other than murder, bring in a verdict without hearing any evidence;"

(my underlining)

The words I have underscored in the above quoted section indicate, in my view, that an accused person is entitled to plead guilty to any offence, including murder, and if the prosecution accepts the plea, the High Court has a discretion, except in cases of murder, to return a verdict without hearing any evidence. That is, where the accused is charged with murder, as in the present case, there must be evidence establishing to the satisfaction of the High Court whether or not an offence has in fact been committed before the court can return a verdict.

In order to satisfy this statutory requirement and relying on the provisions of sec. 273 of the Criminal Procedure and Evidence Act, supra, Mr. Kabatsi informed the Court that, with the exception of the following small portions in the depositions of P.W.2 and P.W.9 which should be expunged from the record, the defence was admitting the entire preparatory examination proceedings:

"P.W.2 - page 4 - lines 14 - 19 -

"Accused never informed me that deceased was in love with small boys at any stage (not even in the 31st May, 1982 gathering) nor with other men. Accused did not even inform me when I asked him what he was stabbing his wife for. I know this knife before Court. It was already wrapped with green tape."

.".9 - page 9 - lines 32 - 35 -

"Accused has never indicated or reported his wife's unfaithfulness to me. Neither did he ever asked me to speak to them. According to my knowledge accused is a butcherman there."

Page 10, lines 14 - 17 -

"I never knew anything concerning Martins and accused's wife. Martins and accused were friendly before. I do not know of anything concerning accused and his daughter in law.

In view of that admission, Mr. Kabatsi continued, counsel for the parties were therefore applying that the proceedings of the preparatory examination be accepted as evidence. Mr. Matsau confirmed.

I granted the application and with the exception of the portions that had been expunged from the depositions of P.W.2 and P.W.9, the proceedings of preparatory examination were accordingly accepted and admitted in evidence before this Court.

The salient question was whether or not formal admissions in terms of sec. 273 of the Criminal Procedure and Evidence Act, supra, formed evidence within the meaning, or for purposes of sec. 240(1)(a) of the Act. A similar question was dealt with at length by Mofokeng J. in Rex v. Sepanya CRI/T/17/77 at page 2 et seq. (unreported) and, in my opinion rightly so, the learned judge replied it in the affirmative. He was not overruled by Milne J.A. who wrote the majority judgment in Sepanya v. Rex C. of A (CRI) No. 7 of 1977 (unreported). Therefore, I am left with no doubt in my mind that the proceedings of preparatory examination admitted in terms of sec. 273 of the Criminal Procedure and Evidence Act, 1981 in the present case form evidence within the meaning, or for purposes, of sec. 240(1)(a).

Briefly, the evidence disclosed by the proceedings of the preparatory examination is that on 15th June, 1981, following a certain report, P.W.7, Trooper Mothepu, proceeded to accused's house at Kolonyama where he found that accused's wife (deceased) had sustained bruises on the face and her eyes were completely closed. P.W.7 questioned the accused and the deceased about the injuries on the latter. Accused simply refused to answer. The deceased gave an explanation

4/ (but this was not

(but this was not disclosed by P.W.7 in his evidence). I shall return to the evidence of this witness later in this judgment.

P.W.8. W/O Toloane also testified that in August 1981, he received a certain report following which he called the accused and the deceased together in an attempt to reconcile them. Deceased complained that accused was having an affair with his daughter in law. In turn accused complained that the deceased was having a love affair with one Martins. P.W.8 reprimanded both the accused and the deceased for their behaviour and asked them to go and keep peace. They both asked forgiveness from each other before parting with him.

During September, 1981, P.W.8 had the occasion to call on accused and deceased at their home and got the impression that they were then happily staying together.

However, P.W.2, Lebakeng Lebata, an elder brother of accused, testified that on 31st May, 1982, the accused came to him in Maseru where he is working at the Ministry of Interior and informed him that he was at loggerheads with the deceased. Accused urged him to go to Kolonyama and reconcile him and the deceased. P.W.2 accordingly went to Kolonyama and chaired the family gathering at which the accused, the deceased, their two sons who were at home, on short leave, from their place of work in the mines were present.

Deceased complained that she and the accused were no longer living happily together at home. The meeting ended on a peaceful note with both the accused and the deceased asking for forgiveness from each other. P.W.2 slept in one of accused's 4 huts for the night.

On the following morning after accused's two sons had returned to their places of work, P.W.2 was in one of the huts when he heard screams from another of accused's huts in which the deceased was. P.W.4 and P.W.6, close neighbours of accused, also testified that they had heard the screams as a result of which they came to accused's house.

P.W.5, Malikotsi Likotsi, a 9 years old daughter of accused, testified on oath and told the Court that on the morning in question, the deceased was standing next to a table when she saw accused suddenly stabbing her on the neck with the knife - Exh. 1. Deceased was not in any way fighting the accused when the latter suddenly stabbed her.

5/ When she . . .

When she was thus stabbed, the deceased fell down on the side of the table. Accused continued stabbing the deceased even after she had fallen down. He stabbed her on the abdomen, hands and all over the body. As he stabbed the deceased accused was saying:

"I have told you."

Coming back to his evidence, P.W.2 said when he heard the screams, he went to the hut in which the deceased was. As the door was still open, he could see the deceased crawling on the floor towards the door. When she noticed him, the deceased called out for help and said:

"my brother, my brother!"

At that stage P.W.2 also saw accused stabbing the deceased several times with the knife - Exh. 1. He was stabbing her on the back. Deceased became hopelessly tired. P.W.2 asked the accused what the matter was but the latter ran passed him (still holding Exh. 1 in his hand) into one of the huts from where he got a bicycle and rode away. When accused thus rode away on a bicycle, P.W.4 and P.W.6 who had just come to the scene in response to the screams, assisted P.W.2 to raise the deceased to a sitting position in an attempt to stop her bleeding. They all noticed that deceased had sustained multiple stab wounds. P.W.4 and P.W.6 told the Court that they did not know anything about deceased's love affair with Martins or any other man for that matter.

A report was sent to the Chief of the area, P.W.9, who arrived at the time the deceased was passing away. P.W.9 sent for the police who came and carried the deceased's body to the mortuary at Hlotse Government Hospital. P.W.2 was one of the people who accompanied the body to the mortuary. He testified that the body sustained no additional injuries while it was being conveyed to the mortuary. He later identified it as that of the deceased before P.W.3, the medical officer who performed the Post Mortem Examination.

In his evidence P.W.3, Dr. Ewals, testified that, during the Post Mortem Examination on the body of the deceased, he observed altogether 13 external wounds mostly on lower abdomen, upper legs and on the back. When he made internal examination on the body, P.W.3 found that there was a hole in the left lung and behind the right kidney.

There was a lot of blood around the kidney region. P.W.3 found that the deceased had lost a lot of blood and formed the opinion that death was due to haemorrhage shock resulting from the injuries that had been inflicted on her. In the opinion of P.W.3, the knife, Exh.1, could have been used, with considerable degree of force, to inflict the injuries that resulted in the death of the deceased.

Now, coming back to his evidence, P.W.7 told the Court that, following a certain report, on 1st June, 1982 he proceeded to accused's home at Kolonyama where P.W.2 showed him the deceased's body which was lying just outside accused's house. On examining the body he found that it had sustained multiple bleeding injuries. He carried the body in a police vehicle to Hlotse mortuary. He confirmed the evidence of P.W.2 that no additional injuries were sustained by the body while it was being conveyed from Kolonyama to the mortuary.

P.W.1, Lt. II Mofalali, testified that on the early afternoon (1.00 p.m.) of 1st June, 1982, the accused came to his office at the airport police station in Maseru and said he was surrendering himself as he had fought and stabbed his wife with Exh.1 which he handed in. P.W.1 examined Exh.1 and found that it had some blood stains. According to the evidence of P.W.1, accused appeared to be confused and disturbed. Accused's explanation for fighting his wife was the latter's unfaithfulness to him. P.W.1 kept accused in custody. On 3rd June, 1982, P.W.1 transferred accused to Leribe police station where on 7th June, 1982, P.W.8 cautioned and charged him of the murder of the deceased.

It is common cause that the deceased was assaulted and fatally injured by the accused on 1st June, 1982. Considering the evidence as a whole, I can find no justification for the accused's brutal assault on the deceased. I take the view that the assault was unlawful. The only question is whether or not in his unlawful assault on the deceased, the accused had the requisite subjective intention to kill. There is undisputed evidence of eye witnesses, P.W.5 and P.W.2, that the accused was seen stabbing the deceased several times with a knife on the abdomen, the back and all over the body even after the deceased had helplessly fallen down and was crawling on the floor. The evidence of P.W.3 that, in the course of his Post Mortem Examination on the body of the

deceased, he found not less than 13 stab wounds, mainly on the abdomen and the back, is consistent with the brutal manner in which the accused assaulted the deceased. I can find no good reason why the evidence of P.W.5 corroborated by that of P.W.2 should be doubted on this point and I am prepared to accept it as the truth. That being so, it must be accepted that in stabbing the deceased in the manner described by the witnesses, the accused foresaw the possibility of his act resulting in the death of the deceased, yet he persisted in it regardless of whether death ensued or not. That constitute legal intention on the part of the accused. It follows therefore, that in my view, the question whether or not in his unlawful assault on the deceased, the accused had the requisite subjective intention to kill must be replied in the affirmative.

In the premises, I am satisfied that the offence against which the accused is charged has been proved beyond a reasonable doubt but by evidence placed before this Court and the accused is accordingly found guilty of murder as charged.

My assessors agree.

B.K. MOLAI

JUDGE

22nd February, 1983.

For the Crown : Mr. Kabatsi,
For the Defence : Mr. Matsau.

CRI/T/27/82

EXTENUATING CIRCUMSTANCES

Having convicted the accused of murder, it now remains for the Court to determine whether or not there are any factors, connected with the commission of the crime, which tend to reduce his moral blameworthiness. The accused must prove the existence of these factors on a balance of probabilities and the test to be applied is a subjective one.

The accused gave evidence and testified that his late wife (deceased) had a love affair with one man by the name of Martins. The deceased was in the habit of making presents with his (accused's) property to this man, Martins. On several occasions the accused, in vain, warned the deceased and Martins to stop their relationship. Life between the accused and the deceased became gradually very unpleasant at home. This culminated in Martins assaulting the accused and the deceased refusing him conjugal rights.

On the day preceding the day on which his late wife met her unfortunate death, accused's elder brother had presided over a family council at which an attempt was made to reconcile the deceased and the accused. On that fatal morning of 1st June, 1982, and as a gesture of demonstrating that peace in the family had been restored, the accused entered the hut in which the deceased, P.W.5 and another child were and tried to kiss the deceased. However, the deceased nagged at him saying she did not want his kiss and the only man she loved was Martins. That was the last straw. Accused became confused and in his confusion reached a knife, Exh.1, which had been lying on the shelves. He found himself stabbing the deceased with that knife in the manner described by the witnesses at the preparatory examination. He had no premeditation to inflict fatal injuries on his wife.

That the accused believed that the deceased and Martins were maintaining an illicit love affair is perhaps borne out by the evidence of P.W.8 and P.W.1, the police officers who testified at the Preparatory Examination stage that the accused had come to them with reports or complaints about the deceased's unfaithfulness to him.

2/ On these grounds

On these grounds, Mr. Matsau submits that the cumulative effect is that there are extenuating circumstances in this case. I agree. It may be added that Mr. Kabatsi for the crown also concedes, and in my opinion rightly so, that extenuating circumstances exist in this case.

It follows therefore, that in my view, the proper verdict in this case should be the one of murder with extenuating circumstances and I accordingly find.

My assessors agree with this finding.

SENTENCE .:

10 years imprisonment operative from 1st June, 1982, the date on which the accused was kept in custody.

B.K. MOLAI
JUDGE .

28th February, 1983.