

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

RALIKHOHO AUPA PITSO

J U D G M E N T

Delivered by the Hon. Acting Judge Mr. Justice
J.L. Kheola on the 12th day of September, 1983.

The accused is charged with the murder of one 'Mannete Pitso (hereinafter called the deceased) on the 2nd July, 1982 at or near Ha 'Mamathe in the district of Berea.

The accused pleaded not guilty to the charge. But at the close of the Crown case the defence tendered a plea of guilty of culpable homicide. The Court refused to accept the plea on the ground that the Crown had established a prima facie case of murder. Miss Moruthane who appeared for the Crown also rejected the plea tendered by the defence on the ground that the severe injuries inflicted upon the deceased by the accused clearly proved that he had the intention to kill. On the other hand Mr. Sooknanan who appeared for the accused argued that the extent of the injuries should not be taken as a factor determining whether the accused had the intention to kill because this was "a passion" killing. The accused and the deceased were husband and wife, having been married to each other for only four months.

The true position is that once the accused has pleaded not guilty to the charge and the Crown has adduced all the

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evidence available to it and closed its case, the matter is entirely in the hands of the Court if the defence tenders a plea of guilty to a lesser offence. (See section 175(3) of the Criminal Procedure and Evidence Act 1981 and Rex v Komo 1947 (2) S.A. 508 at p. 511).

At the commencement of the trial Mr. Sooknanan informed the Court that the defence admitted as evidence the depositions made at the preparatory examination by the following witnesses: P.W.1 'Matabanyane Seboka, P.W.3 Motsieloa Motsieloa, P.W.6 D/Tpr. Moonyane, P.W.7 Dr. Lebohang Williams and P.W.8 Dr. C.T. Moorosi. The evidence of P.W.3 is that on the evening of the 2nd July, 1982 he was driving a taxi and travelling from 'Matjotjo's to T.Y. On the way he was stopped by the accused who told him that he had a problem; in that his wife had fallen into the water where she had gone to relieve nature. This witness did not accompany the accused when he, together with some passengers, went to the spot where the deceased was allegedly lying in the water and the passengers did not give evidence at the trial. The dead body was brought to the taxi by the accused and the passengers and carried to T.Y. hospital.

P.W.7 examined the dead body of the deceased on 2/7/82 and found that her clothes were wet, she had a wound above the left eye, three abrasions on the head, small lacerations on the upper and lower lips, abrasions on front of the neck on both sides of the trachea, faeces in her pants, abrasions on face and body. P.W.8 performed an autopsy of the body of the deceased and found that the cause of death was rupture of the liver with fatal internal haemorrhage. His other findings were: bruises around the anterior part of the neck, lower part of the chest posteriorly extending downwards

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towards the right lumbar region, an incised wound above the left eye; on opening the abdomen 2 litres of blood were noted in the peritoneal cavity; a large (10 x 7 x 5 cm) ragged laceration in the right lobe of the liver, haemorrhage into the soft tissues around the right kidney and a left sided subdural haematoma spread thinly over the cerebral hemisphere.

The evidence of P.W.6 is that on 3rd July, 1982 he went to the scene of the crime accompanied by the accused; the distance from the road where the taxi had stopped to the donga is 250 feet; near a dam in the donga there were some foot prints, a yellow and green jersey and three buttons which accused claimed to be his; a green shawl was found 40 feet on the other side of the donga; 280 feet from the shawl he found a pink petticoat, brown seshoeshoe dress, brown and white skipper. He noticed that garments which had been worn by the accused had soil and blood stains.

The evidence I have summarised above was formally admitted by the defence as I have indicated earlier in my judgment. The main pillar of the Crown's case is the evidence of P.W.1 Lilahloane Letaoa whose evidence may be summarised as follows: on the 2nd July, 1982 she was employed as a taxi conductor by the father of the accused. He had two taxis-one was driven by the accused and the other driven by one Phororo. She was a conductor in Phororo's taxi. The deceased worked at a dry-cleaner at T.Y. and commuted in her father in-law's taxis between her marital home and T.Y.. On the fateful evening, deceased was in Phororo's taxi when they left the bus rank, but when the taxi came near the hospital accused's taxi was following theirs and signalling that they should stop. Phororo stopped his taxi and deceased asked her (the witness), to go

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and find out what the accused wanted. She went but accused did not answer her. She went back to the deceased and reported to her. At this stage the deceased left Phororo's taxi and went to the accused. Phororo's taxi pulled off and when it came to Ramachini's the accused's taxi overtook it. They found it at Koloni and accused told them that it had broken down.

It was agreed that Phororo and one Sello Pitso (P.W.3) must go home and fetch a tractor to tow the taxi. They left in Phororo's taxi leaving the deceased, accused and she (the witness) in the immobile taxi. After Phororo and Sello had left the accused and the deceased had some discussion but P.W.1 says she did not hear clearly what they were talking about except that she heard the name of 'Thabang' being mentioned. At this juncture the deceased alighted from the taxi and said she was going to relieve nature; accused followed her towards the donga but before they went down into the donga she heard the deceased shout and say "jonna, Lilahloane, help me." She saw that the accused was chasing the deceased and hitting her with fists. He caught hold of her and continued to punch her till they disappeared into the donga. The accused threatened to kill her if she came to the assistance of the deceased. After they had disappeared into the donga she went home and made a report to accused's father.

Under cross-examination P.W.1 said it was her first time to see the accused in that terrible mood and she admitted that the anger was due to the discussions the deceased and accused had. I find it unbelievable that P.W.1 could not have heard what the couple were talking about despite the fact that she sat in the same taxi with them. In fact, her
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evidence at the preparatory examination confirms my disbelief.

P.W.2 Nkhabu Pitso testified that he is the father of the accused. His evidence is that the accused had complained to him on four occasions about the deceased's love affair with one Thabang. On the fourth occasion he invited the father of the deceased so that they could jointly try to reconcile their children. He says that on each occasion the deceased denied that she had any love affair with Thabang. He says that the accused is not a short-tempered person.

I need not say anything about the evidence of P.W.3 Sello Pitso because most of what he told this Court was what the accused told him.

The accused went into the witness box and gave evidence which may be summarised in this way: On the evening of the 2nd July, 1982 he went to Makhetheng Dry Cleaners in order to pick up his wife but she was not there. He went to Thabang's house and found her sitting on Thabang's bed with her shoes off. He asked Thabang what was happening but received no reply from him. He then asked the deceased what was happening. She said it was Thabang's fault. He ordered the deceased to leave at once and she complied. He says that the deceased did not go to his (accused's) taxi but went to Phororo's taxi. He alleges that finding his wife in Thabang's house did not at all infuriate him but he remained very calm. From this point to the time the assault took place the story of the accused is the same with that of P.W.1. He goes on to say that his discussion with his wife was about Thabang. He asked her why he went to Thabang's house knowing very well that he was at loggerheads with him because of her. She said Thabang had forced her to go there. The discussion

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went on until deceased said it would be better if they broke up and separated because she had been in love with Thabang for a long time. She promised to work and earn money to repay the "bohali" that had been paid for her.

He says he became very angry and hit her on the face with fists till she got out of the taxi and ran away. He chased her and tripped her when they were near the donga causing her to fall down. He held her by her clothes around the neck and shook her but he noticed that she had fainted. He became very frightened and left her there above the donga where Motsieloa later collected her. The accused claims that he lost self-control when the deceased suggested that it would be better to bring the marriage to an end.

I find it most unlikely that if the accused found his wife under such compromising circumstances with the man he hated so much he would have remained as calm as he claims to have been. The most natural thing would have been to blow up on the spot because there was enough evidence of conjugal infidelity on the part of the deceased. The only probable thing is that the accused did go to the dry cleaners but found that his wife was not there. He wrongly concluded that his wife must have gone to Thabang. There is evidence that by that time the deceased was already at the bus rank and looking for Phororo so that they could go home. The suggestion that the deceased commuted in the accused's taxi only every day must be rejected because there is plenty of evidence that she used any of the taxis available at the time of knock-off. Therefore, there was nothing showing any guilty conscience when that evening the deceased decided to travel in Phororo's taxi; and on the way she willingly changed to the accused's taxi.

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As far as the assault is concerned the accused has lied so much that his evidence cannot be believed by any Court that has properly considered the evidence. The accused lied when he said he merely tripped his wife and shook her by her clothes and punched her while they were above the donga. The evidence of P.W.1 shows that the accused did hit his wife while they were above the donga but he never tripped her. They both went down into the donga still on their feet. The medical evidence as to the nature of the injuries proves beyond any reasonable doubt that a very brutal assault was committed upon the deceased. The evidence shows that the clothes of the deceased were found scattered over a very wide area and some were lying on the other side of the donga. This shows that the struggle and the brutal beating of the deceased must have covered a wide area and possibly much longer time than the accused wants this Court to believe.

The accused showed the police the small dam in which the deceased had fallen and he is therefore lying when he says the body was found above the donga where there was no water at all and yet the clothes of the deceased were wet when the body arrived at T.Y. He was again telling a lie when he said the clothes were wet because Phororo poured water on the deceased in an attempt to revive her.

The evidence adduced by the Crown has proved a very brutal assault upon the deceased by the accused and on the basis of the extent of the injuries Miss Moruthane has contended that the Crown has proved that the accused had the intention to kill. On the other hand Mr. Sooknanan argues that the extent of the injuries is not relevant because the accused lost self-control and that this was passion killing.

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In other words, what the deceased said to the accused provoked him so much that he lost self-control.

Sections 3 and 4 of the Criminal Law (Homicide Amendment) Proclamation 42 of 1959 provide that .

- 3.(1) A man who -
 - (a) unlawfully kills another under circumstances which but for the provisions of this section would constitute murder; and
 - (b) does the act which causes death in the heat of passion caused by sudden provocation as hereinafter defined and before there is time for his passion to cool, is guilty of culpable homicide only.
- 4.(a) The word "provocation" means and includes, except as hereinafter stated, any wrongful act or insult of such a nature as to be likely, when done or offered to an ordinary person to another person who is under his immediate care or to whom he stands in a conjugal, parental, filial or fraternal relation or in the relation of master or servant, to deprive him of the power of self-control and to induce him to assault the person by whom the act or insult is done or offered.

The evidence of P.W.1 confirms the accused's story that before the attack the name of Thabang was being mentioned and we know that the accused had formally complained to his parents about the behaviour of the deceased with Thabang; and some attempts had been undertaken to reconcile the parties. Now the questions to be decided by this Court are .

- (a) Were the words uttered by the deceased that they had better terminate the marriage because she had been inlove with Thabang for a long time enough to provoke an ordinary man of the class of the community to which the accused belongs;
- (b) Did the accused, in fact, lose his self-control.

I am of the view that both questions must be answered in the affirmative. There is no evidence that because of the alleged relation between the deceased and Thabang the


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accused had hated his wife and had desired her death. There is nothing to suggest that the accused deliberately brought the taxi to a stop so that he could have the chance to punish the deceased. The sudden decision by the deceased to terminate the marriage must have provoked the accused and caused him to lose his power of self-control. I am supported in my finding by the P.W.1 who says she had known accused for a long time but had never seen him in that terrible mood and anger. All these factors prove that the accused lost his power of self-control.

I find the accused guilty of the crime of culpable homicide.

(My assessors agree with me).

SENTENCE: Eight (8) years' imprisonment of which three years are suspended for three years on condition that the accused is not convicted of any offence involving assault to another person committed during the period of suspension.


ACTING JUDGE.

12th September, 1983.

For the Crown : Miss Moruthane

For the Defence: Mr. Sooknanan