

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

LEBOHANG MOLIBETSANE

J U D G M E N T

Delivered by the Hon. Mr. Justice M.P. Mofokeng
on the 25th day of October, 1983

Lebohang Molibetsane (hereinafter referred to as the accused) is charged with the crime of murder. He has pleaded not guilty.

I must preface this judgment by referring to the inordinate delay in bringing the accused before this Court. Delays, I am afraid to say it, are becoming a common feature of our Criminal trial system. It should never happen for justice delayed is justice denied. The evidence tendered in most such cases is not always of the best. Most witnesses are scrapping the very bottom of the barrel of their memories. In some cases the guilty man gets away with it because either vital witnesses have since died or have moved to other places without informing the police. Yet in some cases potential witnesses to a crime refuse
/to give ...

to give statements to the police because they fear being made to attend court endlessly. In this same Court in the case of Bofifi v Rex, L.L.R.¹⁹⁸⁰ 1 at 3 (an appeal against the severity of sentence) it was said:

"There can be no excuse for this type of delay in the administration of justice. Magistrates and the staff appointed to assist them must ensure that appeal records are completed as soon as possible

..... The Registrar in turn must put appeals down for hearing with dispatch, particularly in those cases in which appellants are serving their sentences."

The underlying principle in this except is applicable in the present case. There have been trials of cases heard in this Court of crimes committed much later than the date when the present accused is alleged to have committed the crime with which he today stands charged. There have ^{been} accused who were released on bail whose cases have been completed with dispatch. Accused, on the contrary, has been in custody all along. Inordinate delays in bringing the accused to trial has been the subject of many a judgments.

On the 28th November 1981 Bishop Molatoli (hereinafter referred to as Bishop) was preparing a birthday party for his wife Queen. The beverages (including beers and spirits) and snacks (hereinafter referred to as food) were at the party that evening.

/Difa ...

Difa kept the keys to the room in which the food was kept. Another room situated at another block of rooms (See Exh."A") was used for dancing (or jiving according to one's taste). Difa left for the Hilton Hotel to obtain ice-blocks. On his return he went to the room where the food was kept. He was accompanied by Queen and Nombulelo. After a very short time Queen left the room to call her husband Bishop.

Upon entering the room where the food was kept, Bishop's attention was drawn to the fact that the window was open and window pane broken. A few items were missing amongst which were half a dozen cans of castle beer. On the arm of the sofa shoe prints were apparently left. The suspicion fell almost immediately upon people uninvited, people who wore tender shoes. Accused and his friend, one Bafo, wore such shoes. There was apparently another person also. However, when accused and Bafo were invited from the dancing room to the room where food was kept, accused put up such resistance that he was seen in possession of a shiny object in his left hand. When this happened Difa, Bishop and Queen were in the street. It should here be explained that when one moves from the room where the party would be held to the room where the food was kept, one can walk along the pavement or in the street before entering another gate to the room where the food was kept. However, because of the noise many people had gathered at this stage. Queen alerted her husband that accused was in possession of a "knife". The latter
/gathered ...

gathered stones and so did Difa and possibly other by standers. Bafo immediately advised the accused to clasp his knife and put^{it} in the pocket. The latter obliged.

They moved into the room where food was kept. Accused's foot was lifted even though he tried to refuse. Nombulelo says she saw a knife in the hand of the accused. It was already opened. However, the print on sofa differed from the design of the sole of accused's tender shoe. The same was true with Bafo. They were all the time in possession of a tin of castle of beer - similar to the beer cans kept in the room. After the comparisons were made, accused and Bafo were told to leave the premises as they were not invited. They were taken to leave off at the street and it is said they left. When these events took place, the guests had not yet been served with anything. Apparently when accused and Bafo were questioned about the cans of beer they simply replied that they had bought them at 'Maletitlo's.

Later in the evening, Nombulelo was in a room in the same block as where the jive session was held. She made a report. Deceased left the room followed by Nombulelo who stood on the doorway. At that moment the accused was outside. Bafo was talking to Queen. Deceased then requested to have a private talk with the accused who had been coming in the direction of the deceased and the latter was walking towards him.

/However

However, as soon as the deceased emerged accused retreated and deceased apparently kept coming towards him. He was now not saying anything. Accused had one of his hands at the back. Suddenly, he lunged forward and gave a movement with one hand as though he was slapping the deceased. The latter immediately clutched his upper part of the chest and part of the neck for he was slightly in a bending position. Accused immediately ran away and so did Bafo. The deceased tried to follow them but soon returned. He staggered and fell. He was helped by Queen and Nombulelo. He was placed in a car. He had bled where he had fallen and was still bleeding. His white skipper on one side was soaked in blood. Nombulelo joined him in the car.

On the way he ceased to breathe. He was pronounced dead at the hospital.

The depositions of identification of the deceased and the doctor who pronounced him dead at the preparatory examination were admitted as evidence at this trial.

Dr. Mosotho, who certified the deceased dead on his arrival in the Casualty Section of the hospital, deposes in his evidence, inter alia, "The patient had a wound on the left side of the neck anteriorly". The wound in his view had been "inflicted within twelve hours of admission and was caused by a sharp object." He only noticed that the "Clothes of the patient were stained with blood."

/Dr. Titi ...

Dr. Titi Mohapi performed the post-mortem examination on the body of the deceased. She found that death was due to "Exsanguination due to large tear in a major blood vessel." There was an "oval" shaped wound with clean edges at the end of the neck just above the medial end of the right clavicle. Wound (was) 2 cm x 1 cm. Very deep extending into the plural cavity and penetrated through lung (Probe). No other wounds or fractures." The large blood vessel which was torn, was the "jugular vein". There had been massive haemorrhage of blood into the chest.

D/L Sgt. Molefi deposed briefly that, inter alia , accused had informed him that he had fought because he was being attacked. He was in the company of Bafo. After the fight he fled to Lithoteng (which was his home) Upon being asked where the knife was he said it was at Lithoteng (at his home). He was taken there. He looked for it where he said he had buried it. He dug the ground but did not find anything. He (accused) then let the witness into the house and took out a knife amongst others in a drawer and handed it over to the witness. It is Exh. 1. Later another knife was handed over to the witness by the accused's headman. However, it was shown to the accused and he made an explanation the nature of which was never revealed. According to my brief notes which I made as the evidence progressed, not a single question was put in cross-examination to this witness.

/The accused's ...

The accused's evidence is a simple one. Except what he formally admitted through his legal representative, Mr. Isaac Matlhare, (a lawyer of considerable experience particularly in the field of Criminal Law and Procedure) he says he knows nothing about the murder of the deceased. He says he was not anywhere near Bishop's rooms. He says that all the Crown witnesses are falsely implicating him. Accused's attitude is one of an alibi.

Concerning exhibits 1 & 2 he knows nothing because he saw D/L Sgt. Molefi take possession of them at Lithoteng. He does not know to whom they belong.

He knows Bishop by sight. He never wears tender shoes; he heard of the death of the deceased the following Monday when it had occurred on a Saturday. He heard that he had not die in a natural death. He was arrested in the street by Makhamisa. However, it turned out this was, in fact, at the brickwork, Cathedral area. He tried to run away but he caught him and asked him why he had killed Nku (the deceased) so "cruelly". He denied that he had done so.

The events in this case occurred over two years ago. It is, therefore, understandable that contradictions should be present. However, when one looks at the salient features of this case the witnesses are agreed. Difa knows the accused very well. He says he saw the accused at the rooms of Bishop that night. Bishop knows the accused. He knew him before that evening. He says accused was present in one of
/his ...

his rooms. Nombulelo saw accused for the first time that night. However, there was not only sufficient light but also time and certain actions of the accused which drew attention to himself. I am satisfied that her identification is sufficiently reliable. The same remarks apply with equal force to Queen.

By admitting the post-mortem examination report in its entirety the accused admits the cause of death as stated therein. The evidence (of both doctors) clearly shows that a sharp object was used. The witnesses say it was a "knife" but what they describe is seeing a shiny object in accused's hand.

There was enough light in the street from the lighting in the next street. In addition there was moonlight. These facts were not disputed by the defence. Queen and Nombulelo had earlier seen accused and Bafo. Queen knows Bafo. She stood with him talking. The deceased, who was not involved in the earlier episode and was personally known to the accused said to him "My fellowman, let us have a private talk." Instead of coming, the accused retreated and the deceased kept approaching. Then he (accused) struck the fatal blow. Queen and Nombulelo saw this. The accused and Bafo had come back to the party despite their earlier expulsion. The accused could not at that moment have been at Lithoteng. He was here in Maseru. I am satisfied that accused had come back to the party regardless of the earlier request. I believe Queen and Nombulelo.

/Under ...

Under cross-examination, accused negates what he had virtually admitted through his counsel not challenging the evidence of D/L Sgt. Molefi. He now says he had visited Lithoteng which was Bafo's home whereas in his evidence-in-chief he said his home was Moshoeshoe II. To Crown Counsel he emphatically says that the exhibit 1, belongs to a woman called Nosehlano. It was retrieved there by D/L Sgt. Molefi. This the Court was hearing for the first time like many other assertions by the accused.

The contradictory nature of the accused's evidence is, in my view, a clear indication of his state of sobriety at that particular point in time. I honestly do not think he recalls with clarity what actually took place. Despite the favourable evidence given by D/L Sgt. Molefi he brazenly brands him a liar. Indeed he goes further to show that he is an invertebrate liar, he blames his legal representative who has done so much for him at this trial. He also brands him a liar. The onus is on the Crown to prove the falsity of the accused's alibi. In my view that onus has been discharged beyond reasonable doubt and the accused's explanation (and there was no onus on him to prove anything) has been shown to be palpably false beyond reasonable doubt and hence could not possibly, reasonably be true.

There is evidence that the accused was already drinking at the party and this was before the guests were served with either snacks or drinks. Nobody knows whether he had been drinking and if so what quantity before he

/arrived ...

arrived at the party. His actions, in my view, suggest that he was already under the weather. Otherwise I am satisfied that the accused is an inveterate liar. I am satisfied that he is the person who stabbed the deceased fatally that night. However, the burden of proving that the accused though drunk had the necessary intention is on the Crown and not for the accused to prove his state of sobriety.

In the result the accused is discharged of the offence of murder but because he acted negligently as a consequence of which the deceased died he is found guilty of the crime of culpable homicide.

My assessors agree with my findings.

S E N T E N C E

I have listened with utmost interest to the most impressive address by your counsel. In my view, he has said all that a legal representative would say for his client in your position.

The Courts have, for a long period of time, warned against the wanton use of a knife. It remains with them now to impose such sentences as will deter the likes of the accused. Personal circumstances of each accused will be taken into consideration. The Courts, as usual will, where circumstances permit, temper justice with mercy. However, that does not imply that the accused ought to be treated with maudling sympathy for that will no longer be justice but would rather encourage the society to take the law into its own hands. (self-help)

From the evidence the deceased had had nothing to do with the altercations. He was not even present. He was approaching the accused as a friend to see whether some further information concerning the missing cans of beer could be obtained. He was peaceful. For that he died. He has forfeited his valuable young life (He was about 22 years of age). His parents have lost a son through the negligence of the accused. It is, therefore, understandable that he should be severely punished so as to expiate for his sin in this world. The life of a fellow human-being is sacred. Those who take it away without just cause must be punished.

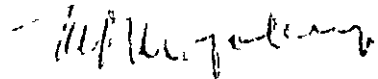
/This ...

This is one of those dreadful, awful stabbing cases which are rampant in this country. They must cease.

The Court has taken into consideration the administrative punishment accused has already received. The Court expresses its profound sorrow. Nevertheless, in the final analysis the Court must do its duty and pass, not only a deterrent sentence, but discourage, by passing robust sentences so that there is no resort to self-help by the community.

The sentence of the Court is that the accused will go to prison for a period of 10 (ten) years.

My Assessors fully endorse this sentence.



J U D G E
25th October, 1983

For the Crown : Miss Nku
For the Accused : Mr. Matlhare