

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

v

LIPHAPANG MAHLAKENG

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice Mr. Justice T.S.
Cotran on the 10th day of October 1984

The accused Liphapang Mahlakang was indicted before me on a charge of murdering Api Theko (the deceased) on or about the 23rd July 1983 at or near Ha Sekete in the district of Maseru.

The accused offered to plead guilty to the crime of culpable homicide at the end of the case for the Crown but the latter did not accept the plea. On the 30th August 1984 I entered a verdict of guilty of murder but with extenuating circumstances. My assessors agreed with the verdict. The Judgment was brief and was dictated into the recording machine. I said reasons will be filed later and these now follow.

It is common cause that the accused stabbed the deceased a number of times on his body one such stab wound penetrated the heart and caused the deceased death.

The deceased was once chief of Sekete village, but for some reason or the other that need not concern us, he was removed from his position some years ago. When he was the chief he (through his wife when acting in his absence) had allocated the accused a site adjacent to his own but over the years a dispute arose between them over the boundaries. The accused developed a garden which the deceased claimed was not included

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in the allocation. Both the deceased and the accused worked in the mines in the Republic of South Africa and would come home on leave but not necessarily at the same time.

It is conceded that the accused has complained against the deceased to the administrative authority, i.e. to the person who had supplanted the deceased as chief. He summoned him and the accused to appear before a superior chief to resolve the dispute over the garden but whilst the accused used to make an appearance the deceased completely ignored the calls. This happened three times. I could discern from the current junior chief's evidence that his sympathies (over the garden dispute) were with the accused but if it was the deceased's wife who did the allocation it seems to me the deceased was in better position to know which portion he allocated.

On the 23rd July 1983 the deceased arrived home on his periodic visits. The time was just before sunset. His wife was not there but there was a young woman of 22 'Mamakhaola (P.W.1) who had been only employed for two weeks previously to look after the family's three children. The deceased noticed that the accused had surrounded (but had not actually fenced) the disputed garden with poles. The deceased went into his house and put down some luggage he was carrying. He enquired from his children who had erected the poles, and when they told him it was the accused, he proceeded to the end of his compound that abutted on the accused's house, uprooted the poles, and called upon the accused to come out. The accused was in his house with his wife and his brother-in-law one Tsietsi.

The evidence of 'Mamakhaola was to the effect that when accused came out with his wife and brother-in-law, the deceased

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asked the accused why he had surrounded the garden with poles. The accused replied he did so because it was his. Accused's wife said that garden was her husband's and Tsietsi, the brother-in-law, also said so. Deceased told Tsietsi to shut up as the matter was none of his business. The witness says Tsietsi picked up a stone and threw it at the deceased. Deceased was hit and fell down. Accused rushed at deceased and when the latter was prostrate he stabbed him with a knife several times. The deceased managed to rise and run towards his house and was chased by accused, but deceased fell at the stoep. Accused did not reach deceased at the stoep. The witness adds that the deceased carried no weapon, not even a stick. She saw accused come out carrying a stick (Exhibit 1) but not the knife (Exhibit 2). She however saw stabbing movements at the time and saw a knife the following morning.

Tsietsi's version is to the effect that the accused on seeing that his poles had been pulled out by the deceased went into the house and came out carrying a thick stick Exhibit 1 and remonstrated with the deceased. He saw them talking or arguing. Tsietsi says in chief that he went back into the house and when he came out again he saw accused chasing deceased and stabbing him. Deceased fell to the ground. Accused got on top of him and stabbed him three times when prostrate. Tsietsi says he succeeded finally in holding accused from inflicting further punishment on deceased but deceased got up and chased accused who was running to his (accused's) house, but accused hit deceased on the head with a stick. Deceased then ran back to his house and fell on the stoep.

On cross examination Tsietsi says that deceased carried a knife, a panga type used for slaughtering animals. He saw
/accused

accused and deceased fighting with weapons, i.e. accused with the okapi type and the deceased with the panga. This is what the accused says from the witness box. I do not believe either the accused or Tsietsi. The panga type knife, if carried by the deceased, would have been seen by 'Mamakhaola because the deceased was not wearing anything that could have concealed such a formidable weapon when he went to the boundary of his plot and pulled out the poles. Furthermore the same type of panga was seen with accused a few weeks previously when he held a feast in his house and an animal was slaughtered. In addition the accused did not have a scratch on his body indicating that he was not involved in a fight let alone a mortal fight from which he could not escape, nor did he complain to the police, or anyone else for that matter, of an injury to his person, or that he had acted in self defence. There is no evidence that the deceased when he called accused to come out and the latter did, that deceased uttered words of provocation to make accused lose his powers of self control. Deceased said words to the effect that accused's erection of the poles showed "disrespect" to him, his chief. The deceased was not of course his chief for he had been deposed, but his words seem to indicate that he regarded his removal from the chieftainship as unjustified. I have a feeling that the accused had no claim of right to this garden but took advantage of deceased's removal and the sympathy of deceased's replacement to enlarge the plot allotted to him during deceased's reign. This surmise does not affect the case one iota however.

I find the accused guilty of murder and my assessors agree.

The Court is enjoined after a verdict of guilty of murder to proceed in a separate stage to examine if extenuating circumstances exist justifying the Court in passing a sentence

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other than that of death. In this case the Court is satisfied from the evidence of the Crown that there was absence of premeditation to kill on accused's part, for he did not expect the deceased to turn up suddenly that afternoon; I also accept that whilst the deceased did not provoke accused in the legal sense, there was an attitude of belligerency by his act of uprooting the poles fixed by the accused and deceased's neglect, if not indeed refusal, to go to argue his case over the disputed garden before a superior chief.

The accused's act of stabbing deceased when he was prostrate on the ground, does not indicate that he was prepared to show mercy to a foe. I do not think that a sentence of less than 9 years imprisonment can be justified on any ground.

My assessors agree.

CHIEF JUSTICE

10th October 1984

For Defendant : Mr. Monaphathi

For Crown : Mrs. Bosiu