

IN THE HIGH COURT OF LESOTHO

In the matter of

R E X

v

SIMON TSOKOLO MAPHALANE

J U D G M E N T

Delivered by the Hon Chief Justice Mr Justice  
T.S Cotran on the 4th day of June 1984

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The accused Simon Tsokolo Maphalane was indicted before me on a charge of murdering Nanaku Masupha on the 18th December 1982 at or near Ha Senekal in the district of Berea.

In answer to the indictment the accused pleaded guilty to murder. The Court, as usual, entered a plea of not guilty but asked Mr. Maope, defense Counsel, what his instructions were. Mr. Maope said his instructions were to admit the killing but that it was his submission that the circumstances of the killing amounted to culpable homicide not murder. Crown Counsel Miss Nku said she was prepared to accept that plea but apart from the fact that there was some drinking going on at a party where the killing occurred, there was nothing in her opening address, or on the record of the preparatory examination, (which is before me) to justify the Court in accepting that plea or, to put it bluntly, to rubber-stamp what Crown Counsel was prepared to accept.

Mr. Maope admitted all the depositions of the witnesses taken at the preparatory examination but requested that some of them be

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called for cross-examination. In the event, I heard two witnesses 'Malebohang Lejakane (P.W.1) and Setjeka Lejakane (P.W.2) who was 'Malebohang's son and these two were cross-examined at length.

The evidence is not unusual. On the 18th December 1982, 'Malebohang (P.W.1) had a stockfare party with music (from a space gram) at her home. It started at 8 a.m. At 6 p.m. the headman ordered the people to go home. Since, however, some of the people had bought plenty of drinks before the sale of liquor was stopped, they remained to finish it off. That took another two hours.

The accused had arrived at about 12 midday. He did drink, but not excessively, and he was described as "more dancing than drinking". The deceased arrived at 5 p.m. accompanied by a man called Mpe. Mpe however left the party about 6 p.m. At 8 p.m. 'Malebohang told the few people remaining (six or seven in number) that they ought to go home and she left the drinking hut for a short while but returned to it later.

The accused was heard to address the deceased with the words "come let us go" and the deceased was heard to say that she does not wish to be "rushed" and would leave "in her own time". Soon after this conversation the accused was seen hitting the deceased first with a small stick, then kicking her with his boots, and finally stabbing her with a huge knife (Exhibit 1) on the neck severing an artery. The deceased bled to death. When asked for reasons for this behaviour the accused replied that she - the witness 'Malebohang - should not be frightened by the blood of a drunkard, that she - the deceased - was a whore, and that he - the accused - was not afraid to go to prison for what he has done.

The accused's defence was that he had had some drinks, that the

/deceased

deceased was his lover, that she had come with Mpe a man who was also her lover, that he had a tiff with Mpe when Mpe spilled his beer over him, and that after Mpe had gone he had another quarrel with the deceased over priority of playing a record of his choice at the Juke Box or space gram, that the deceased teased him over it and sided with Mpe, by telling him that he (accused) made false allegations against Mpe Mpe, however, had long since left the party.

This, with respect, is no provocation. There was no evidence that accused drank to such an extent that he did not form the subjective intent to kill. This is murder and I so find. My assessor agrees.

CHIEF JUSTICE  
4th June 1984

For Defendant Mr. Maope

For Crown Miss Nku

Extenuating circumstances, on the grounds of absence of premeditation and consumption of alcohol having been found, the accused was sentenced to 8 years imprisonment.

CHIEF JUSTICE