

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

v

RABOTOKO MOTS'ETS'E

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai  
on the 26th day of June, 1984.

The accused is charged with the crime of murder on the following allegations :

"in that upon or about the 17th April, 1983 and at or near Thabana Tsoana in the district of Mafeteng the said accused did unlawfully and intentionally kill one Moselantja Mots'ets'e."

At the commencement of the trial, Mr. Nthethe who represented the accused in this matter informed the Court that the defence admitted the deposition of Dr. Van Lugt who was PW.12 at the proceedings of the Preparatory Examination. The admission was accepted by Mrs. Bosiu, counsel for the Crown. In terms of the provisions of s. 273 of the Criminal Procedure and Evidence Act, 1981, the deposition of Dr. Van Lugt was accordingly admitted in evidence and it became unnecessary, therefore, to call him as a witness.

Briefly the evidence heard by the court was that on the morning of Sunday, the 17th April, 1983, PW.1, 'Malebohang Ntela, was sitting with the deceased in the latter's house. There was a time when PW.1 went out to pass water. While she was outside the house, PW.1 noticed the accused coming towards the deceased's house. He was carrying a blanket on his shoulder and a

2/ stick in the .....

After she had passed water, PW.1 returned into the house. At that time the deceased who was rinsing her mouth was about to go out when the accused placed his blanket and stick on the stoep outside and entered into the house. As he entered into the house, the accused remarked : "We are only three in the house. I want to kill you so that your husbands can remain without wives." He kicked the deceased's baby, Tebesi, who was crawling on the door way saying: "This is not a person." The accused then clapped the deceased and stabbed her with a knife in the middle of the chest. The deceased leaned against a table next to which she had been standing. The accused stabbed her for the second time below her left armpit and she dropped to the floor. The knife with which the accused stabbed the deceased was lightish in colour and was not one of the two knives handed as Exhibits in this case.

When she saw the deceased thus stabbed and dropping to the floor, PW.1 ran out of the house screaming. The accused chased her for some distance before giving it up. She ran to PW.5, 'Malerato Mots'ets'e, who was at a nearby field and tearfully reported what had happened.

Accused's version was slightly different. According to him on the evening of Saturday the 16th April, 1983, he had been assaulted by PW.1's husband, one Mokhoro Ntela, and others. On the following morning, Sunday the 17th April, 1983, he went to the headman (PW.7) to obtain a letter with which to go to the police and report the assault on him by Mokhoro and others. He armed himself with a stick and a knife with which to protect himself if his assailants tried to ambush and attack him on the way.

While the accused was at the headman's place, the deceased's husband (PW.6) came in the company of Mokhoro and another. They demanded that the headman should get him (accused) out of his yard. When the headman did not comply, they went away. The accused then took the letter and left for Sephapo police post.

On the way to Sephapo police post, accused had to pass next to deceased's house when he heard the deceased who

was standing outside the house calling out that he (accused) was going to report to the police. The deceased's husband and Mokhorro then got out of the house and the latter was about to rush at him (accused) when his wife, caught hold of him and told him not to go and fight the accused on the road. The deceased's husband then warned the accused to run as fast as he could.

After he had passed the deceased's house on his way to the police post, the accused noticed that the deceased's husband, Mokhorro and another were following him. He ran to the next village and took refuge at the house of one Mathibela. The deceased's husband and his party came to Mathibela's house and pretended to be looking for beer. When they were told that there was no beer, the deceased's husband offered him 50c which the accused, however, declined. They then left Mathibela's place and took the direction towards Sephapho police post at Taung. For fear of being ambushed and attacked by the deceased's husband and his companions on the way to the police post, the accused decided to return home.

When he approached the deceased's place on his way back home, the accused noticed the deceased still standing outside her house. He went to her and asked why she was inciting her husband and others to assault him. The deceased's reply was that they had fixed him alright and in fact she thought they had already finished with him. As she said those words, the deceased attacked him with a pair of shearing scissors which she had been holding in her hand. The accused warded off the blow with his hand but the deceased managed to stab him in the palm before she retreated. When he saw blood coming from his palm, the accused got confused and in his confusion took out the knife from his pocket, went to the deceased and stabbed her twice. The knife with which he stabbed the deceased was a "best" pocket knife. At the time he and the deceased started fighting, PW.1 ran away and she could not have seen him stabbing the deceased. The accused denied that after stabbing the deceased, he chased PW.1.

4/ After he had ....

After he had stabbed her, accused noticed that the deceased was bleeding. He got frightened by the sight of blood from the deceased and fled. He went to the headman's place and reported to his wife as the headman himself was not in. He then went to the chief, one Chieftainess 'Maborata or 'Majoalane Sefali, who is senior to the headman. The Chieftainess wrote him a letter with which to report himself to the police at Mafeteng. However, according to the accused, the chieftainess did not write the letter. She merely put her date stamp on the letter written by PW.7, lehola Hlalele (headman).

On his way to the police, accused felt frightened and threw the knife he had used to stab the deceased with into the water. As he entered Mafeteng township, he had a thought that the police might ask him to produce the knife with which he had stabbed the deceased. He met a certain Buti Mosheshe from whom he borrowed the knife, Exh.3. He later thought Exh.3 was too big. He went via the house of PW.8, 'Mamorena Lints'a, and asked her to keep Exh.3 for him. He told her he was going to the shops and would come for it later on. PW.8 agreed and told him to place Exh.3 on the table. As he placed it on the table, accused noticed a smaller knife, Exh.2. He secretly took it and left. PW.8 confirmed accused's story and told the court that after the accused had left, she wanted to use Exh.2 to prepare some vegetables but could no longer find it on the table. She later identified it at the police charge office.

According to the accused, when he left PW.8's place, he went to the police station, reported what he had done to the deceased and handed in Exh. 2. After making the report, the Mafeteng police told him that they had just received a phone call from Sephapho police post where he should go and report himself. Exh.2 was given back to him.

The accused then left but instead of going to Sephapho police post went straight home. On his arrival at home, he met PW.7 who told him to go and put up for the

5/ night at his .....

night at his (PW.7's) home. He did. On the following day a messenger, one Khubelu Matekane, was detailed to escort him to Sephapho police post where he was tortured and told to produce the knife with which he had stabbed the deceased as Exh.2 was not the one. He eventually told the police at Sephapho about Exh.3. He was then taken to Mafeteng police station from where he took PW.10, D/Tpr. Hlaele, to PW.8's home. He told PW.8 to produce Exh.3 and she did. This was confirmed by both PW.8 and PW.10.

According to PW.10, the accused was on 19th April, 1983 handed to him at Mafeteng by a certain Tpr. Lekhooa from Sephapho police post. He was carrying an "okapi" knife about which he made a certain explanation. Following that explanation, the accused took him to the home of PW.8 whom she told to produce the knife he had left with her on the previous day. PW.8 complied. It was a "sable" knife. PW.10 took possession of the two knives i.e. the "okapi and the "sable" knives which were handed in as Exhibits 2 and 3 respectively. According to PW.10, the accused never reported any injuries to him. The accused, however told the court that he was later sent to prison and to the medical officer for treatment.

The evidence of PW.7 was slightly different. According to him, after Chieftainess 'Maborata had instructed the accused to go and report himself at Mafeteng police station, he noticed him arriving in the village at about 5 p.m. on the same day. When he asked what the police had said, the accused told him that they had released him. PW.7 became suspicious and ordered the accused to go with him straight to his (PW.7's) house. Shortly after, they had come there, a messenger from Chieftainess 'Maborata arrived with the instruction that he (PW.7) should detain the accused to be returned to the police station under escort on the following morning.

Assuming accused's story that the deceased stabbed him and he also stabbed her while they were outside the deceased's house and they both sustained bleeding injuries, one would naturally expect to find blood stains

on the forecourt of the deceased's house. As it will soon become apparent, none of the witnesses who came to the deceased's house immediately after she had been stabbed testified that they saw any blood stains outside the house. The only blood that was seen at the deceased's place was inside the house where she was found lying. That, seems to give support to PW.1's evidence that the accused attacked the deceased inside the house in the manner she had described. I am prepared, therefore, to accept her evidence as the truth on this point.

The evidence of PW.1 that after the accused had stabbed the deceased she ran to PW.5 was supported by PW.5 herself, who told the court that she was the mother of the accused and the deceased was the wife of accused's younger brother, Molikeng. The eldest of her sons was Ntai (DW.2). PW.1's husband, Mokhoro, and his brother Sanki were the nephews of her sons i.e. the children of her daughter.

On the Sunday in question she was in her maize field when PW.1 came to her crying and reported that the accused had stabbed the deceased with a knife. She and PW.1 then immediately proceeded to the deceased's house.

According to PW.1's evidence, on their way to the deceased's house, she noticed the accused walking away in the direction from the deceased's house. He was carrying the blanket and the stick that he had placed outside the deceased's house at the time he entered into the house. As he walked away, the accused called at PW.5 and said "Hey you, Your mother's anus you are, go and take that victim (phofu) of yours to the mortuary, for that is your law". PW.1 believed that PW.5 heard what the accused said, for he was only about 100 yards away from them. PW.5 denied, however, that she heard the accused insulting her as described by PW.1 She said she did not even see the accused on that day. She conceded, however, that her hearing and eye sight were no longer very good because of her old age. Although she was shocked that he had stabbed her daughter-in-law (the deceased) to death, PW.5 assured the court that the accused was the most respectful and peace loving of her five (5) sons. It was, therefore, unthinkable that he could have insulted

7/ her. That the ....

her. That the accused was a peaceful person was also confirmed by PW.7, the headman in the village.

The evidence of PW.1 was, however, supported by that of fourteen (14) years old PW.3, Seabata Ramalebo, who told the court that at about noon on the day in question he and two other boys were playing next to PW.5's home when they heard a scream coming from the direction of the deceased's house which was out of view. They ran in the direction from where the scream came. When they came within the view of the deceased's house, PW.3 saw PW.1 running towards PW.5 who was at her field. As she screamed and ran to PW.5, PW.1 was saying : "Malulu, I have seen a cruel thing. My maternal uncle Rabotoko has stabbed my maternal aunt Moselantja with a knife." At about the same time PW.3 noticed the accused walking away in the direction from the deceased's house. He was carrying a blanket on his shoulder, a stick in his hand and walking fast in the direction towards Au-Jong village. When accused passed above PW.3's parental home, he called at PW.5 and told her to go and take her daughter-in-law to the mortuary. PW.3 did not, however, hear the accused uttering any insults to PW.5. He went to deceased's place and found her lying prostrate in a pool of blood in the house. He could see that the deceased had an injury below her left armpit. The deceased was still breathing and from that PW.3 concluded that she was still alive. PW.1 and PW.5 arrived while he was still there. He, however, got frightened by the sight of the deceased's injury and left.

P.W.2, Sebolelo Mots'ets'e, the daughter of accused's elder brother, Ntai, also confirmed that on Sunday the 17th April, 1983 she was at her home at Au-Jong's when she noticed PW.1 running to PW.5 in the field. She was screaming and saying her maternal uncle was killing the wife of her maternal uncle with a knife. She reported that to her father, Ntai. Soon after she had seen PW.1 running to PW.5, PW.2 noticed the accused passing next to her home. He was carrying a stick and going in the direction from the deceased's house. As accused passed next to her home, PW.2 heard him

saying: "I have cut someone "khutsana". She did not know what the accused meant by those words. Shortly after, PW.5 came to her home and made a report to Ntai. PW.5 and Ntai then left together for the deceased's place. PW.2 herself did not go to the deceased's place but later learned that the deceased had passed away.

The accused denied the evidence of PW.1 and PW.3 that he had insulted or talked to PW.5 on that day. I must say I also find it improbable that the accused insulted or talked to PW.5, his own mother, in the manner described by PW.1 and PW.3. I find no convincing reason or motive why he should have done so. This was, in all probabilities, an exaggeration on the part of PW.1 and PW.3. I am prepared, therefore, to accept the accused's version that he never did.

PW.1 and PW.5 confirmed the evidence of PW.3 that when they came to her house, the deceased was lying in a pool of blood on the floor in her house. There were no blood stains outside the house. According to PW.1, the deceased was lying on her baby. This was, however, denied by PW.5 who said the baby was crawling on the door way from where she picked and carried it on her back. The baby was later taken from her by 'Mabereng, her daughter, who arrived soon after she (PW.5) and PW.1 had come to deceased's place. PW.5 said when she saw the deceased lying in a pool of blood, she got frightened and left the house screaming. She went to call her eldest son, Ntai, while PW.1 and 'Mabereng went to look for the deceased's husband at a place called Taung.

According to PW.5, she did not actually reach the home of Ntai. She stood next to the home of one Sekola, in the village, from where she called Ntai and told him to hurry to the deceased's place. PW.5, therefore, denied the evidence of PW.2 that she actually came to Ntai's home and made a report as a result of which Ntai left with her for the deceased's place.



The evidence of PW.2 that PW.5 did come to the home of and reported to Ntai with whom she went to deceased's home was, however, confirmed by PW.4, Pakalitha Lerata, who told the court that at about 10.00 a.m. on Sunday, the 17th April, 1983, he was visiting Ntai when the accused passed next to Ntai's place. He heard the accused talking to himself saying he had cut a person "khutsana" and the relatives should go and take that person to the mortuary. He, too, did not know what the accused meant by the words "he had cut a person "khutsana". Neither he nor Ntai replied to what the accused said.

After the accused had passed, PW.5 came to Ntai's house and made a report. She then left with Ntai for the deceased's home. Ntai himself confirmed the evidence of PW.2 and PW.4 on this point.

In my view, PW.5 was probably mistaken when she said she had not actually reached Ntai's home. I am prepared, therefore, to accept the evidence of PW.2 supported by PW.4 and Ntai himself that she did.

PW.1 confirmed the evidence of PW.5 that after 'Mabereng had come to deceased's house, she went with her to look for the deceased's husband, Molikeng, at Taung. On the way she felt tired and remained behind due to her advanced stage of pregnancy. She was not present, therefore, when 'Mabereng found and made a report to the deceased's husband. 'Mabereng and the deceased's husband later found PW.1 on the way when she joined them back to the deceased's house. This was confirmed by PW.6, Molikeng Mots'ets'e.

According to the evidence of PW.6, he owed an amount of M2 to a certain woman by the name of 'Masekoriki Sekoala at Taung. On the morning of Sunday, the 17th April, 1983, he was taking the M2 to 'Masekoriki Sekoala. He was going in the company of his two nephews, Mokhoro and Sanki. On their way to Taung, they called at a drinking house in one of the villages where they found the accused. They asked for beer but were told that it was finished. PW.6 then gave 50c to the accused to buy himself beer where he

could find it in the village. He and his nephews then continued on their way to Taung. PW.6 denied that when they called at the house where they found the accused, they were after the accused whom they wanted to assault.

I think it is clear from the evidence that at the relevant time PW.6 had not been confronted with the accused following his alleged misunderstanding between the accused and the deceased, his wife. The two brothers were in all probabilities not in the best of terms. It seems to me unlikely, therefore, that at the time PW.6 could have been so well disposed towards the accused as to give him 50c with which to buy himself beer in the village. That being so, the accused's story that PW.6 and his two nephews wanted to assault him on his way to the police post and the offer for 50c to the accused was just a pretext is more sensible and I am prepared to accept it as the truth.

Be that as it may, PW.6 went on to tell the court that he and his nephews eventually found 'Masekoriki Sekoala and gave her the M2.00. They then looked for and found beer in the village. While they were drinking, 'Mabereng came and made a report about what had happened to the deceased. They immediately hurried back home. At home PW.6 found the deceased lying prostrate in a pool of blood on the floor in her house. She was covered with a blanket, presumably dead. He uncovered the deceased and found that she had sustained a bleeding wound on the chest between her breasts. There was another wound behind her left shoulder blade. He did not notice any blood stains on the forecourt of the house.

After PW.5, who was still at the scene, had given him an explanation, PW.6 and his two nephews went to report to his elder brother, Ntai. Ntai, however, showed no sympathy and told them to leave his place. When they did not leave the place, Ntai fired a shot at PW.6 but missed. It was then that Ntai was assaulted with sticks by PW.6's nephews.

In his evidence, Ntai denied to have shown no

11/ sympathy ....

sympathy for what had happened to the deceased. According to him when they arrived at his house, PW.6 and his two nephews told him to produce the accused. When he could not, they attacked him with sticks and PW.6 was the first to hit him a blow on the head. He had to use a firearm to scare them off.

P.W.6 told the court that after the scuffle with Ntai, he and his nephews returned to the deceased's house. Later the police arrived and the body of the deceased was subsequently conveyed to the mortuary at Mafeteng Government Hospital. He accompanied the body which sustained no additional injuries on the way to the mortuary. He identified the body as that of his wife, the deceased, before the medical officer who performed the postmortem examination.

PW.9, Sgt Moseli, confirmed that, at about 4.00p.m. on 17th April, 1983 and following a certain report, he proceeded to Thabana-Tsooana where he found a dead body of a woman in a house. The body was identified to him as that of the deceased. He inspected the body and found that it had sustained an open wound between the breasts and another one below the armpit. He could not notice anything of particular interest outside the house. He subsequently had the body conveyed to the mortuary at Mafeteng but on the following day, i.e. not on the 17th April, 1983, due to lack of transport. He confirmed the evidence of PW.6 that whilst it was being transported to the mortuary, the body sustained no additional injuries.

Dr. Van Lugt's deposition which was admitted in evidence disclosed that he was the medical doctor who, on 18th April, 1983, performed a post mortem examination on the body of the deceased. The body was identified before him by PW.6 and another. His findings were that the deceased who was about 34 weeks pregnant had sustained two stab wounds, one on the chest and another on the ribs. The second wound penetrated the ribs into the chest cavity and, in his opinion, caused the death of the deceased.

12/ Considering the ....

Considering the evidence as a whole, there can be no doubt in my view, that the deceased died as a result of injuries inflicted upon her by the accused. The only question that arises for determination by this court is whether or not when he so inflicted the fatal injuries on the deceased, the accused had the requisite subjective intention to kill.

It was contented on his behalf that when he stabbed the deceased, the accused acted in self-defence. This was based on the accused's story that before he stabbed her, the deceased had attacked and injured him with a pair of shearing scissors outside her house. For reasons already explained, I have found the accused's story unconvincing and accepted as the truth the evidence of PW.1 that the accused had in fact attacked the deceased inside the house in the manner she described. That granted, there can be no question of self-defence.

For the sake of argument, even if it were accepted that the deceased was the first to attack the accused with a pair of shearing scissors, I am not so convinced that the defence of self-defence would avail the accused, in the circumstances of this case. In his own testimony the accused told the court that after she had stabbed him in the palm, the deceased moved backward. That being so, the deceased placed the accused in no imminent danger that would call for self-defence. However, the accused who was holding a stick in his hand took out a knife from his pocket, unclasped it, went to the deceased and stabbed her. Surely the accused could have hit the deceased a blow with the stick, a less dangerous weapon, that was readily available in his hand. Moreover, if it were true that after stabbing him in the palm, the deceased moved backward, the accused then clearly had the opportunity to avert whatever danger was facing him by running away from that pregnant woman. He did not. Instead the accused went for the deceased and admittedly stabbed her twice with his knife.

Accorrding to PW.1's evidence, which I have no reason to doubt on the point, before assaulting the deceased the accused remarked that he was going to kill her and PW.1 so that their husbands would remain without wives. Again, by stabbing the deceased with a knife in the upper portion of her body as described by PW.1, the accused was surely aware that his act was likely to result in her death. He, nonetheless acted regardless of whether or not death occurred.

In the circumstances, I come to the conclusion that the only reasonable inference to be drawn is that the answer to the question whether or not in assaulting the deceased, as he did, the accused had the requisite subjective intention to kill must be in the affirmative. I accordingly find the accused guilty of murder as charged.

My assessors agree.

P.K. MOLAI,  
JUDGE

26th June, 1984.

For the Crown : Mrs. Bosiu.  
For the Defence: Mr. Nthethe.

CRI/T/35/83EXTENUATING CIRCUMSTANCES.

There was evidence that on 16th April, 1983 the accused was attacked by PW.1's husband (Mokhoro) and others. On the morning of the following day, the 17th April, 1983, the accused was on his way to the police station to report the incident when Mokhoro, joined by the deceased's husband (Molikeng) and Sanki, followed him clearly with the intention to assault him. For fear of being ambushed and assaulted by his pursuers, the accused had to abandon the idea of going to the police station and return home.

No doubt, the accused was disturbed by the attitude of Mokhoro and Molikeng so that when he found their wives alone, the temptation to revenge himself was great. That in my view is a factor to be properly taken into account in determining whether or not there are circumstances which tend to reduce the moral blameworthiness of the accused's act.

I come to the conclusion, therefore, that extenuating circumstances do exist in this case and the proper verdict should be that of guilty of murder with extenuating circumstances.

My assessor agrees.

SENTENCE: Ten (10) years imprisonment.

B.K. MOLAI

JUDGE

28th June, 1984.