

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

v

KHALAKI LETELA

REASONS FOR JUDGMENT

Filed by the Hon. Chief Justice Mr. Justice
T.S. Cotran on the 25th day of July 1984

The accused Khalaki Letela was indicted before me on a charge of murdering 'Mamookho Letela, his sister-in-law (deceased) on or about 12th August 1983 at or near Ha Lebopo in the district of Mokhotlong.

It was common cause that the accused stabbed the deceased and caused her death in circumstances, also common cause, which will be shortly described. The accused, personally and through his counsel Mr. Matsau, offered to plead guilty to culpable homicide on the ground that he, the accused, did not have the subjective intent to kill because he believed the deceased was bewitching him.

The Crown's case was not seriously challenged. The main witness was the accused's own kith and kin, namely, Masheshena Letela (P.W.2) the accused senior uncle and head of the family who had brought him up as a son and his brother Mpho (P.W.1).

/The accused

The accused is married but his wife had gone to work in Natal and seems to have lost interest in her household. Accused and his wife have one child living with her family. We know that this child had, some three or four years previously, been ill but this illness did not persist. We also know that the accused's father Paul married twice. Selelai Letela was his half brother, i.e. a son from his father's first wife. The accused was a son from the second wife. When Paul the father died the accused's mother inherited her husband's three fields and tilled them. She died in 1975 and after her death an agreement was reached, with the chief's blessing, that one of the fields will be tilled by Selelai and two fields by the accused. The deceased 'Mamookho was Selelai's wife.

About a week or so before the stabbing the accused, who had a separate house, went to his uncle and complained that he was feeling ill. The accused seemed frightened and told his uncle that an animal was "chocking" him. The uncle saw no animal around and understood that the accused felt that he was being bewitched but he did not say who was the cause. Furthermore the accused seemed to be taking some herbal medicines prescribed by one Kimano. To cut a long story short the uncle allowed the accused to stay in his house.

On the evening of 12th August the accused arrived at his uncle's house to sleep as he had been doing in the previous week. Earlier both of them had been to a drinking party. The uncle was first to return home. When the accused arrived he seemed agitated and requested his uncle to accompany him to the

/deceased's

deceased's home barely 50 paces away. The uncle refused. Two lads were sleeping in the house, namely, Mpho and Ramahetlana. The accused woke them up and requested them to go and call two other persons, viz, Tanki and Rampai. Tanki (who was another brother of the accused) and Rampai were duly called. When they arrived at the house the accused asked them to accompany him to the deceased's home. They refused and departed. The accused then requested Mpho (his other younger brother) and Ramahetlana to accompany him there. Ramahetlana did not testify, but Mpho did. He said that the accused knocked at the deceased's door and demanded to be admitted. The deceased replied she had no matches to put on a light. Accused ordered Mpho to fetch some matches. On his way back with the matches he heard screaming from inside the deceased's house. There was light on and the accused must have made his way in. He ran to inform his uncle. The uncle takes up the story from there. He found the accused lying on top of the deceased who was prostrate on her stomach and the accused was stabbing her all over the body with a knife. The accused would not stop. He said he is not afraid even if he was to be shot. Finally the knife was wrested from him, but he managed to inflict over 14 stab wounds (according to the policeman who examined the body on the following day) and after that he kept kicking her with his boots.

The deceased had died a very violent death. The accused says that she was bewitching him. He says that he formed this opinion because she owned a black cat and one day when he was lying on bed in his own house this black cat entered and jumped

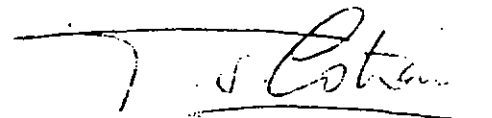
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over him. When she did so he felt numb all over the body. In addition he quarrelled with his sister-in-law over the fields inherited from his father and he attributed the illness of his child to her.

Now Mr. Matsau submits that accused did not have the subjective intent to kill. With respect I do not think the argument is sound. What may be true is that the accused "subjectively" thought the deceased was bewitching him, but that is not equivalent to lack of intent to kill. The evidence was that accused was in his sober senses, that he knew what he was doing, that he did appreciate the consequences, that he was prepared to accept them even though they could have meant his own death at the hand of the law. The accused has been normal throughout his life. I have sent the accused to see Dr. Mohapeloa who testified he suffered no mental abnormality at all. The Psychiatric report is in the record.

In my opinion the accused is guilty of murder although I am prepared to find that extenuating circumstances exist by reason of lack of premeditation and sudden impulse. One of my assessors thought the accused should receive the death sentence but was persuaded otherwise.

I sentence the accused to 15 years imprisonment. Both my assessors agree.



CHIEF JUSTICE
25th July 1984

For Defendant : Mr. Matsau
For Crown : Mr. Kalamanathan