

CRI/T/6/83

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

VS

LIJANE TSIBELA

J U D G M E N T

Delivered by the Honourable Acting Chief Justice Mr.
Justice J.L. Kheola on the 3rd day of November, 1986.

The accused, Lijane Tsibela, is charged that on the 17th day of November, 1982 and at or near Mathebe in the district of Mafeteng he murdered Mokhoea Tsibane. To this charge the accused pleaded guilty of culpable homicide; his counsel, Mr. Ngakane, informed the Court that the accused admits having caused the death of the deceased under extreme provocation from the deceased.

Mrs. Bosiu, counsel for the Crown, indicated that the Crown did not accept the plea and would lead evidence to prove the crime charged.

Mr. Ngakane admitted as evidence before this Court the depositions at the preparatory examination of all the Crown witnesses except that of Tseko Ranchebe who was P.W.1 at the preparatory examination.

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I shall first of all give a summary of the evidence that has been admitted by the defence. 'Malerole Tlahali (P.W.2) deposed that on the 17th November, 1982 she saw the accused chasing her father, Tseko Ranchebe (P.W.1) (whose evidence was not admitted by the defence). They were leaving the yard of the deceased and appearing at the corner of her father's house. It was at about 6.00 p.m. and she was about 120 yards from them. The accused chased his father for some distance and caught hold of him. He hit him with a fist. When she shouted and asked the accused what her father had done, he let him free and went away. He went to his house. After that she went to the chief's place and made a report to the chief.

On her way from the chief she met the accused below her father's dam. He was carrying a knife in his right hand and his hat in the left hand. He asked her if she knew him and she ran away. She jumped over a fence into the yard of one 'Maabia. The accused passed and went to the cheif's place.

Mopeli Matete (P.W.3) is the chief of Mathebe area. On the 17th November, 1982 the accused came to his place at dusk. He told him that he had stabbed his father with a knife and that he could be dead. Accused produced a brown okapi knife and told him that it was the weapon he used. The chief took possession of the knife and told the accused that he was then under arrest. The accused snatched the knife from him and walked out of the house saying that he was going to report himself to the police. Later that evening he went to the deceased's place and found that he was dead in his yard.

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On the following day the police came to the village and examined the dead body. He noticed that the dead body had many wounds.

About a month before this incident the accused had reported that his 18 sheep and 9 lambs were missing and that he suspected that his father (the deceased) had stolen them.

W/O Masunyane (P.W.8) testified that on the 30th September, 1982 the accused came to the charge office and reported the loss of his sheep and that he gave the name of his father as a suspect. The investigations were made and the deceased denied any involvement in the disappearance of the sheep.

The evidence of D/Trp. Mosala was to the effect that on the 18th November, 1982 the accused came to her office at Mafeteng charge office and gave her a brown okapi knife and made an explanation regarding the death of the deceased.

Dr. M.K. Ramatlapeng deposed that on the 18th November, 1982 she performed a post-mortem examination on the dead body of Mokhoeea Tsibela and formed the opinion that death was due to shock, severe post haemorrhagic anaemia, multiple wounds most of which could cause immediate death, he referred particularly to the wound on the flank abdomen and the three chest wounds which penetrated into the chest cavity. Regarding the external appearances of the body there were three wounds on the chest, disembowelled intestines on the left flank abdomen through a wound 10 cm. long and multiple holes on the exposed bowel, multiple lacerations on the forehead, ten wounds on the left thigh and a wound on the right armpit penetrating the chest cavity. the lungs and the liver had wounds.

I turn now to the evidence of Tseko Ranchebe whose deposition was not admitted by the defence. He testified that on the day in question the accused arrived at his (Tseko's) home and caught hold of him. He dragged him towards the house of the deceased. He was holding an okapi knife in another hand. As he dragged him accused said that he should come so that he could kill him together with his friend. When the witness asked the accused why he wanted to kill him, he (accused) asked him where his (accused's) sheep were and said that if he did not take them out he was going to kill him like the deceased.

When they came to where the deceased was lying prostrate in his yard he noticed that he was covered with blood all over his body and face, his cloths were covered with blood. The deceased tried to raise his head when he talked to him but the accused kicked him three times. The witness managed to escaped and ran away. The accused chased him and caught him and dragged him back to the deceased. Before they came to the deceased, his daughter 'Malerole shouted at the accused whereupon he let him free and chased his daughter. He went to his house and locked himself into it until the following morning when he came out and found that the deceased was dead.

Under cross-examination he denied that the cause of the fight was that he and the deceased tried to drive away the sheep the accused was herding in a wheat field. He said that he and accused had been on good terms and never had any quarrel. He admitted that on the day in question the accused was in a rage and he had never seen him being in that mood. The accused and the deceased were on good terms and never had a major quarrel except the minor dispute they had about the earmark.

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The version of the accused is that prior to the incident which forms the subject-matter of this charge, he informed the deceased that he was going to slaughter his ram because he had bought another one. The ram was actually slaughtered by the deceased because he approved what the accused was doing. The trouble started when he (accused) gave some meat to a neighbour who often gave him meat when he slaughtered his sheep. The deceased strongly disapproved of the habit of giving the meat of his father's sheep to the Ngunies and even threatened to steal the sheep of the accused. Some time after the threat was made his sheep actually went missing and he looked for them for the whole day but in vain. The matter was reported to the chief and to the police. The deceased was even detained by the police for about two days but the sheep were never recovered.

On the 17th November, 1982 he was herding the sheep in his father's yard when he heard the deceased call Tseko Ranchebe (P.W.1) saying that he should come so that they can take the remaining sheep because he had finished with the police and that he was wiser than him (accused). Tseko came and he and the deceased started driving the sheep towards the gate where he (accused) was standing. As the sheep approached him he raised his blanket and waved it. The sheep ran away and scattered in the garden.

The deceased came straight to him and delivered a blow at him with his stick. He warded off the blow with his arm and took out a knife from his pocket, unclasped it and stabbed the deceased on the left side of his trunk. He says that because of the confusion and rage in which he was he does not know how many times he stabbed the deceased.

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Tseko ran away when he stabbed the deceased the first wound. He then left his father lying there and went to report the fight to his chief.

He says that he believed that the deceased and Tseko would drive away the sheep during broad daylight and steal them like they had done with the first flock of his sheep that went missing after his father had said he would take them.

The plea of provocation when an accused person is charged with murder has been discussed in numerous cases in this Court. It will be necessary to establish the facts of the present case before I can refer to such cases, if necessary. I find the story of the accused to be most improbable. The deceased was an old man of about 70 years of age. I do not agree with the finding of the doctor that the deceased was 60 years old. His son (the accused) was born in 1933 which means that when the accused was born his father was only 13 years old. That is impossible. The deceased must have been about 20 years old when the accused was born. Tseko Ranchebe (P.W.1) is also an old man of about 73 years of age. The accused wants this Court to believe that these two old men saw him herding sheep and went to him and tried to take the sheep out of his possession by force. Where would they take them to since the accused and the deceased were using the same kraal? If the deceased wanted to steal the sheep why would he not do it at night like he is alleged to have done with the first flock? The story of the accused is not only improbable but it is also disproved by the evidence of Tseko Ranchebe and 'Malerole Tlahali (P.W.2).

Tseko explained how the accused dragged him from his home to the spot where the deceased was lying dead or dying. The old man answered

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the questions under cross-examination in such a forthright manner that he impressed me as a truthful witness. The accused said that he never chased Tseko but 'Malerole saw when he chased him and even shouted at him. This piece of evidence was admitted by the defence. The defence again admitted that when the accused returned from the chief's place he met 'Malerole and chased her. I take it as an afterthought when the accused now denies that he ever chased Tseko Ranchebe. I believed Tseko when he said the accused dragged him to where the deceased was dying and forced him to take out his sheep or else face death like his friend.

The question is why did the accused brutally kill his father?. On the day he had gone to report the disappearance of his sheep to the chief, he said he suspected that his father had stolen them and said that he would kill him. This statement was admitted by the defence. When this statement is taken together with what the accused said to Tseko, that he would kill him like his friend if he failed to take out his sheep, the reason for the murder becomes very clear. The accused suspected that his father had stolen his sheep and killed him for that.

The plea of provocation to a charge of murder is governed by the Criminal Law (Homicide Amendment) Proclamation No.42 of 1959 which requires that the person who pleads provocation must do the act which causes death in the heat of passion caused by sudden provocation before there is time for his passion to cool (See Rex v. Pholo Hloarle 1967-1970 L.L.r. 121). It was also held in Hloarle's case that an accumulation of past grievances cannot be pleaded by an accused person who sets up the plea of provocation.

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In Rex v. Lira Moleleki 1980 (2) L.L.R. 441 the accused was a migrant labourer in the Republic of South Africa. He used to send money to the deceased, his cousin, for investment. It later became apparent that the deceased was putting it to his own use. The accused tried to sort it out amicably but the deceased was arrogant and refused to co-operate. One Sunday they met by chance. The accused attacked him and murdered him. The plea of provocation was rejected. See also the cases of Rex v. Tlelima Lehoaga, CR/T/11/82 (unreported) and Moramang Petje and Tsokotsa Petje v. Rex C. of A (CRI) No.4 of 1981 (unreported).

In the present case the suspicion that the deceased had stolen the sheep of the accused arose on the 30th September, 1982, i.e. about one and half months before the killing.

The other disputes between the accused and the deceased concerned the ownership of the sheep. It seems that the accused was never given his own earmarking, so that all the animals he bought were marked the same earmark as that of his father. The deceased may have decided that since the accused was the only son and heir to his estate there would be no point in giving him his own mark. However this arrangement did not work and caused a lot of animosity between them.

I have come to the conclusion that the accumulation of past grievances in present case cannot be pleaded as provocation. Even if when the accused and his father met on the 17th November, 1982 they started quarreling again over the theft and ownership of the sheep, it cannot be said that there was sudden provocation inasmuch as the quarrels had been going on for a long time.

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I find that the accused had the necessary intention for murder in the form of dolus directus.

The accused is found guilty of murder.

My assessors agree.

J.L. KHEOLA
ACTING CHIEF JUSTICE.

3rd November, 1936.

For Crown - Mrs Bosiu
For Defence - Mr. Ngakane.

EXTENUATING CIRCUMSTANCES

It is clear from the body of the record that there are extenuating circumstances. The accused and the deceased did not live harmoniously together. The accused accused the deceased of having stolen his sheep. His belief that his father had stolen his sheep was based on the ground that some time before the sheep went missing, his father had said that he would take them away because he (accused) slaughtered the sheep and gave the meat to outsiders.

The accused further testified that after the disappearance of the sheep his father was actually detained by the police and released after two days. This detention gave the accused the wrong impression that the deceased was involved.

There was also a misunderstanding as to the ownership of some of the sheep. The deceased referred to the sheep as the property of his father. The accused disputed this and said that some of the sheep were bought by him with his own money.

Section 296 (2) of the Criminal Procedure and Evidence Act 1931 provides that in deciding whether or not there are extenuating circumstances, this Court shall take into consideration the standards of behaviour of an ordinary person of the class of the community to which the accused belongs. The accused in the instant case is an ordinary villager living in the rural area. The fact that his father was actually detained after he laid a charge against him gave him the wrong impression.

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Taking into account the possibility that when they met on the fateful day the deceased might have boasted that he was wiser than the accused because the latter tried to have him arrested and convicted of theft but he got away with it; the accused must have taken this as an insult or "provocation" and fiercely attacked the deceased. Although "provocation" did not operate to reduce the crime of murder to culpable homicide I think it has to be taken into account as an extenuating circumstance. (S. v. Mangondo, 1963 (4) S.A. 160).

I find that there are extenuating circumstances. The accused is guilty of murder with extenuating circumstances.

Sentence:- Eight (8) years' imprisonment.

J.L. KHEOLA
ACTING CHIEF JUSTICE.

3rd November, 1986.

For Crown - Mrs. Bosiu
For Defence - Mr. Ngakane.