

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

ABIEL SEBOTSA

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 9th day of December, 1986.

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

"Upon or about the 28th August, 1983, and at or near Upper Thamae in the district of Maseru, the said accused did unlawfully and intentionally kill one 'Mathinyane Sebotsa.'"

It may be mentioned from the word go that the depositions of Sepinare Sula, Chaka Sebotsa, Lebusa Phothane Police woman Letsie, D/Tpr. Ranthona and Dr. Moji who were respectively P.W.2, 3, 4, 5, 7 and 8 at the proceedings of Preparatory Examinations were admitted by Mr. Pheko, counsel for the defence. Mr. Seholoholo who represents the crown in this matter accepted the admissions. In terms of the provisions of S.274 of the Criminal Procedure and Evidence Act, 1981 the depositions of P.W.2, 3,4,5,7 and 8 at the Preparatory Examinations proceedings became evidence and it was unnecessary, therefore, to call the deponents as witnesses in this trial.

According to his evidence D/Tpr.Ranthona examined the dead body of the deceased at the mortuary. He found sjambok weals all over the body and the face was swollen. This was confirmed by Dr. Moji who told the court that he was the medical doctor who performed the post mortem examination on the body of a woman at the Queen Elizabeth II hospital

2/ mortuary

mortuary. The body was identified to him as that of the deceased by Chaka Sebotsa. This was confirmed by Chaka Sebotsa himself who was P.W.3 at the proceedings of the Preparatory Examination.

Dr. Moji further told the court that the body of the deceased had multiple sjambok marks on the face, trunk, buttocks and thighs. There was blood coming from the mouth and nostrils. On opening the body he found extensive extra-cranial haematoma, subdural and subarachnoid haemorrhage. From these findings Dr. Moji formed the opinion that the injuries could have been inflicted with the use of a blunt instrument and death had occurred as a result of the head injury, secondary to subdural haematoma.

I can think of no good reason why the evidence of Doctor Moji that the deceased died as a result of the injuries inflicted upon her should be doubted. I am prepared therefore to accept it as the truth. The salient question that arises is whether or not the accused is the person who inflicted the injuries that brought about the death of the deceased.

In this regard it is perhaps useful to mention that it is common cause from the evidence of P.W.1 Mannete Ncheke (a married sister of accused) P.W.2 Kekeletso Mampe (a friend of accused's family), Lebasa Phothane (accused's nephew) and indeed the accused himself that on the day in question, 28th August, 1983 they all attended a feast at the home of Sepinare Sula in the village of Qoaling. This is also confirmed by Sepinare Sula.

During the celebrations a fight broke out between the accused and the deceased, his wife. The cause of the fight is not so material for the decision in this case. What is important is that as a result of the fight the deceased and the accused seemed to be very crossed with each other and the deceased was using abusive language towards the accused. To avoid further trouble accused accepted the suggestion that P.W.2 should take the deceased to his house and try to cool down her temper before she could go to her house. This P.W.2 did. When in the late evening of that day, he realised that the deceased was still bitter about the accused, P.W.2 suggested that the deceased should spend the night at his home and go to her house in the morning. He

even asked the deceased to sleep with his (P.W.2's) wife in the bedroom while he would sleep in the sitting room. However, the deceased declined the offer and chose to sleep in the sitting room rather than use the bedroom with P.W.2's wife. Early in the morning of the following day P.W.2 received a report that the deceased had died at her house. It was then that P.W.2 realised that the deceased had not slept in the sitting room of his house.

It is common cause that soon after P.W.2 and the deceased had left the place of the feast, the accused and P. W.1 also left. They first went to accused's house where they dropped him while Lebusa Phothane drove P.W.1 and her parents, who had also attended the feast, to their respective homes at a place called Masianokeng.

According to P.W.1's evidence they first dropped her parents at their house and then proceeded to her own house. She, however, decided to return with Lebusa to accused's house. This was because she had noticed that the accused was still unhappy and she feared that a fight might again start between him and the deceased when the latter arrived home that evening. When they came to his house they found the accused sleeping in a chair in the sitting room. They later assisted him into his bedroom. P.W.1 told the court that at about between 10 p.m. and 11 p.m. that night the deceased came home. She (P.W.1) went to her in the kitchen. She was talking to the deceased in the kitchen when accused appeared and asked her where she came from at that time of the night. The deceased then started hurling insults at the accused who caught hold of her clearly in an attempt to beat her up. The deceased then slipped out of the clothes she was wearing. She caught hold of accused's private parts and bit them. Accused was moving backward while the deceased held on to his private parts. When they came to the door leading into the dinning room, the deceased stumbled and let go of accused's private parts. Accused then rushed into the bedroom armed himself with a sjambok and returned to the deceased when he started whipping her. He whipped her all over the body. P.W.1 tried to intervene but the accused whipped her as well. She ran out of the house to raise an alarm. When she returned

4/ P.W.1 found

P.W.1 found the deceased already fallen in the kitchen and was breathing in an unusual manner. P.W.1 went out to asked for help. She came back with another woman by the name of Nthuseng. Believing that the deceased who had no clothes on was feeling cold they put a blanket over her but she soon bulged and died.

The evidence of accused is slightly different from that of P.W.1. According to him at about 11.00 p.m. on the night in question he was in bed when he heard some noise in the kitchen., He went there and found it was P.W.1 and the deceased. He was worried about the deceased going about at night and pointed out to her the danger thereof. However, the deceased became more noisy and hurled insults at him. When he pleaded with her to go to bed and stop making noise, the deceased rushed at him, caught hold of him by the private parts and bit them. As she pulled and bit his private parts the deceased was on her knees. She was crawling towards him as he moved backward. When they entered through the door leading into their combined sitting and dinning room the deceased bumped over the threshold and bashed her head against one of the chairs in the dinning room. In the process she let go of his private parts. The accused then rushed into the bedroom, armed himself with a sjambok and returned to the deceased. When she noticed him, the deceased rushed at the accused. He however moved aside. The deceased went passed and bashed her head against the wall. He whipped her several blows on the back with the sjambok. The deceased again rushed at him but the accused once more jumped aside. The deceased went passed, bashed her head against the wall and fell down. P.W.1 then intervened and the accused stopped assaulting the deceased. He denied to have whipped P.W.1 as well.

I must say I find accused's story that the deceased was running and bashing her head against the walls in the house like a wild bullet highly improbable. If this were the truth P.W.1, his own sister who was in the house, would have seen it. She did not. Similarly if accused's story that as she pulled on his private parts the deceased was crawling on her knees were to be believed, obviously she could not have

fallen hard when she stumbled at the door way between the kitchen and the dinning room. Moreover, if it were true that there was a chair next to the door in the dinning room it was the accused who was moving backward into the dinning room who would have first stumbled over it and not the deceased who was crawling towards him. P.W.1's version that when he came and found her still making noise in the kitchen the accused was the one who first attacked and caught hold of the deceased in an attempt to beat her up sounds more sensible, particularly so if it were borne in mind that the two had had a fight at the feast during the day and were meeting for the first time following that incident. I am prepared to accept P.W.1's story as the truth and reject that of the accused as false on this point.

It is common cause that following the accused's assault on her the deceased died right in the kitchen. With the assistance of his nephew Lebusa Phothane he conveyed the body of the deceased to the mortuary at Queen Elizabeth II hospital. He surrendered himself and handed the sjambok to Police woman Letsie according to whose evidence she took possession of the sjambok, cautioned and charged the accused as aforesaid.

Considering all this evidence there can be no doubt that the question I have earlier posted viz. Whether or not the accused is the person who inflicted the injuries that brought about the death of the deceased must be answered in the affirmative. The only question is whether or not in so doing the accused acted with the requisite subjective intention to kill.

I am convinced that the accused assaulted and inflicted the fatal injuries on the deceased in the course of a fierce fight in the house. That being so, I find it difficult to believe that the accused could have entertained the intention to kill. He was however, negligent in his assault on the deceased.

I come to the conclusion, therefore that the proper verdict should be that of culpable homicide and accordingly

6/ find

find the accused guilty of culpable homicide.

SENTENCE:

M400 -00 or 4 years imprisonment.
My assessors agree.

B.K. MOLAI.

JUDGE

9th December, 1986.

For Crown : Mr. Seholoholo
For Defence : Mr. Pheko.