CRI/T/23/85

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

HLOMELANG NKOJA
KOPANE NTISANE

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 16th day of June, 1986.

The two accused have pleaded not guilty to a charge of murdering one Liza Sanftleben, it being alleged that on or about 1st November, 1984 and at or near Lisemeng (UNDP) in the district of Leribe they each or both unlawfully and intentionally killed the deceased.

It may be mentioned from the word go that at the close of the Crown case Mr. Mohau, who appeared for the accused in this matter, applied for the discharge of No.2 accused on the ground that the Crown had failed to adduce evidence on which a reasonable Court could convict him on the offence against which he stands charged. The application was opposed by Mr. Seholoholo, counsel for the Crown.

In my opinion there is a distinction between an application made at the close of the Crown case for the discharge of an accused person and an application made after the defence has closed its case for the acquittal

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of the accused. There is no law compelling a Court of law to deal with the question of credibility of evidence where an application for the discharge of the accused person is made at the close of the crown case unless, of course, it can be said that the crown evidence was so hopeless that to refuse to do so and call upon the accused to answer the charge against which he stands charged will amount to asking him to help build a case which the crown itself has failed to establish. All that the court is required to do at this stage of the trial is to look at the evidence adduced by the crown and ask itself whether or not on the face of it the evidence establishes a prima facie case. If the answer is in the affirmative then the court is entitled to refuse the application. That, however, does not mean that the accused will be bound to go into the witness box and testify in his defence. The defence is perfectly entitled to say, in that event, it is closing its case and does not wish to lead any evidence. It is only then that the court will be bound to deal with the question of credibility of evidence and apply the more stringent test of proof beyond reasonable doubt to determine whether or not the accused person has committed the offence against which he stands charged.

In the present case there was evidence adduced by the crown that No.2 accused had told the police that he and No.1 accused had attacked the deceased and took possession of some of her belongings. There was also evidence that No.2 accused had taken the police to Maputsoe and T.Y. where he said he would show them the person to whom he had sold some of the deceased's belongings.

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I took the view that on the face of it, i.e. without going into the question of its credibility, this evidence did establish a prima facie case for No.2 accused to answer the charge against him and accordingly refused the application for his discharge at the close of the Crown case.

As it was perfectly entitled to do the defence told the court that it was then closing the case for No.2 accused. The court will now be bound to go into the question of credibility of evidence and apply the more stringent test of proof beyond reasonable doubt to determine whether or not No.2 accused had committed the offence against which he stands charged.

It must further be mentioned that during the course of this trial the crown counsel sought, in terms of the provisions of s. 227(3) of the Criminal Procedure and Evidence Act, 1981, the admission of the depositions made by 'Makhauta Mphosi and Thabang Phatsisi who were, respectively, P.W.17 and P.W.21 at the proceedings of the Preparatory Examinations on the ground that the deponents could not be found after a deligent search had been made and were, therefore, not available to testify before this Court.

In support of his allegation that a deligent search had in vain been made for the deponents the Crown counsel adduced the evidence of P.W.12 D/Tpr Monyane and P.W.8 D/Sgt Khosi. According to P.W.12 some time in October 1985 he proceeded to the home of Thabang Phatsisi at Sebedia, in the district of Berea, to serve him with a subpoena calling upon him to give evidence in this case.

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He could not find Thabang who was alleged to be at Hlotse, in the district of Leribe. In January, 1986 P.W.12 then sent the subpoena to P.W.8 at Hlotse with instructions that the latter should serve it on Thabang at Hlotse. P.W.8 confirmed this but told the court that as he could not find Thabang he had to return the subpoena to P.W.12. This was also confirmed by P.W.12 who testified that following the return of the subpoena by P.W.8 he again went to Sebidia to try and serve Thabang - that was still in January 1986. Thabang was, however, still not at home and once more P.W.12 could not serve him. He then sent back the subpoena to T.Y. - police from whom he had originally received it for service.

As regards 'Makhauta Mphosi all that P.W.8 told the court was that he spoke to T.Y. police who informed him that she could not be found at her home. Well, that is obviously inadmissible hearsay evidence which cannot be of assist to this court.

If the last time the police tried to serve a witness who was to give evidence in a trial that was to start in May, was in January, 1986, I do not think that could be considered deligent search for the witness. The witnesses may well have been at their homes, at the start of this trial and an attempt to serve them ought to have been made. This had not been done and I had no alternative but to refuse the application made under the provisions of s. 227(3) of the Criminal Procedure and Evidence Act, supra.

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Mention has also to be made that during the course of this trial the depositions of Kartor Phillipot and Morgan Michael Johnson who were, respectively, P.W.1 and P.W.2 at the proceedings of the Preparatory Examination were admitted by counsel for the accused and the crown counsel accepted the admissions. In terms of the provisions of s. 273(1) of the Criminal Procedure and Evidence Act, supra, the depositions became evidence and it was unnecessary, therefore, to call the deponents as witnesses.

From their evidence it is common cause that the American Citizens, Kartor Phillipot and Michael Johnson, were mother and son who, like the deceased, had come to Lesotho as members of the Peace Corps. They occupied a next door house to that occupied by the deceased in the area of Lisemeng at Hlotse Reserve in the district of Leribe. They, therefore, knew the deceased and No.1 accused who was her gardener. The young Michael (about 12 years old) was very much found of the deceased and used to feed the latter's dog whenever she was away.

One Tuesday evening towards the end of October, 1984 at about between 5.30 p.m. and 6 p.m. Mrs. Kartor and her son were in their house getting ready for dinner when they heard sharp screams of a woman. They thought the screams came from the street outside the house and did not bother. Later that evening Michael had the occasion to look at the house of the deceased and noticed that the lights were not on. He was again not bothered. The following day (Wednesday) Michael realised that the car in which the deceased used to drive to work was still

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parked outside her house. Still he was not over concerned.

However, on Thursday of that week the boy noticed that the deceased's dog appeared very hungry. That caused him some concern and he decided to go to deceased's house and find out if it had been fed. As the doors of the house were closed he first went to the window of the deceased's house and called out her name. There was no reply. He then went to the door and tried to open it. It was not locked and so it opened. As he entered into the house Michael was shocked by the sight of trails of what appeared to be blood on the kitchen floor and the deceased's legs peeping into the kitchen from the bedroom. He immediately took to his heels. As his parents were not in at the time he first reported to their domestic servant and later to his parents when they returned home. This was confirmed by his mother and the domestic servant who appeared before this Court as P.W.10 and testified that she did the washing and the house cleaning for both Mrs. Kartor and the deceased.

Following the report from the boy, Michael, P.W.10 also went to deceased's house and found the kitchen door open (presumably left open by Michael). She looked inside the kitchen and notice trails of blood leading from the kitchen into the bedroom and the deceased's legs peeping into the kitchen from the bedroom. She got a fright and left the place. According to P.W.10 she then instructed the boy to go and make a report to people living in some of the neighbouring houses. I shall return to P.W.10's evidence later in the course of this judgment.

It is not clear from the evidence who made a report

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to the police but P.W.8 told the court that on 1st November, 1984 he received a certain report following which he proceeded to the house of the deceased. He found the front door closed but the kitchen door open. He entered the house through the kitchen door and noticed a trail of blood leading from the kitchen to the bedroom where he found the body of the deceased lying on its back in a pool of blood on the floor next to the bed. It was dressed in a brown skirt, a pinkish blouse and a white bra.

There was also a general disorder of articles in the house. As he entered the kitchen he noticed a lady's shoe and a pair of boggard or geans on the floor; next to the door of the washroom there was a basket from which seed packets and a variety of other things had fallen to the floor; in the living room two carboards were left open; next to the carboards several cassette tapes were scattered on the floor and the table; the floor of the living room was literally littered with many letters; in the bedroom and on the floor next to where the body was lying he found a yellowish bermuda which had blood stains; there was also a penty lying next to the bed and the wardrobe was left open. From all this general disorder P.W.8 got the impression that someone had been fiddling with the deceased's property in the house.

The witness then proceeded to undress the body in order to examine it for external injuries. He noticed altogether five wounds on the body i.e. an open wound on the right armpit, an open wound above the right breast, an open wound above the left breast and an open wound under the left armpit. A photograph showing these

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injuries was, by consent, handed in from the bar under exhibit C.

After examining it P.W.8 conveyed the body of the deceased in a vehicle to the mortuary and it sustained no additional injuries whilst being transported to from the house to the mortuary.

P.W.1, Dr. Moorosi, testified that he was the medical doctor who, on 2nd November, 1984, performed the autopsy on the deceased's body which was identified before him by P.W.7, Mini Austin. He made notes at the time of examination from which notes he compiled his post mortem examination report, exhibit B. His findings confirmed the evidence of P.W.8 that there were altogether five (5) incised wounds on the chest region of the deceased's body. On opening the body, P.W.1 found that the wound above the left breast penetrated into the left pleural cavity and had severed subclavian vessel with the resultant hemothorax and lung collapse. From these findings he formed the opinion that death was due to acute haemorrhage, haemothorax and lung collapse.

The evidence that the injuries described by both P.W.8 and P.W.1 on the body of the deceased resulted in her death was not really disputed. I have no good reason to disbelieve it and would, therefore, accept it as a proven fact that the deceased died as a result of those injuries.

The next salient question for the determination of the court is who had inflicted the injuries and, therefore, caused the death of the deceased. In this regard P.W.8

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told the court that after he had transported the deceased's body to the mortuary he immediately started looking for No.1 accused whom he regarded as a suspect following information received. Three weeks later P.W.2, D/Tpr Mpopo, handed to him No.1 accused together with certain property alleged to have been found in the possession of the accused. The property included exhibits 1 - 9 before this Court.

This was confirmed by P.W.2 who also told the court that on 21st November, 1984, and following information he already had in his possession, he and another police officer by the name of Heisi met No.1 accused at T.Y. public market where he was having a meal. He cautioned No.1 accused and told him that he considered him a suspect in this case. He was, therefore, not obliged to say anything and should he decided to do so he should know that that could be used as evidence against him at a later stage. P.W.2 then arrested and brought No.1 accused to T.Y. police station.

At the police station No.1 accused gave certain explanation following which he took P.W.2 to a certain house in the village of Ha Molemane. From that house No.1 accused handed to P.W.2 exhibits 1 - 7 and 9. P.W.2 took possession of the articles and returned, together with the accused, to the police station where No.1 accused again handed to him exhibit 8 which he had been wearing over another pair of trousers. No.1 accused's explanation regarding exhibits 1 - 9 was that he had taken them from the deceased following his quarrel with her over his wages which the deceased refused to increase. P.W.2 then charged No.1 accused with murder, sent for Hlotse police

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when P.W.8 and one D/Sgt Mokheleli came and received the accused together with the property found in his possession.

Coming back to his evidence, P.W.8 further testified that after he had been handed to him No.1 accused gave him certain information following which he proceeded to No.2 accused's home at a place called Pulane. That was on 23rd November, 1984. He found No.2 accused at home, cautioned and arrested him after which he warned him in terms of the Judge's Rules. He then brought No.2 accused to Leribe police station where he joined No.1 accused. The two accused then explained that on 30th October, 1984 they had attacked the deceased at her house and took her belongings. No.2 accused specifically said he took a bag, some clothings and a watch belonging to the deceased. Following his explanation No.2 accused took P.W.8 to Maputsoe and T.Y. where he said he would show him the person to whom he had sold the watch. They could not, however, find that person. According to P.W.8 the two accused were kept under police custody for about five (5) days during which period they were taking the police to various places from where they promised to produce some of the property they had taken from the deceased's house on the day they had attacked her. It was suggested under cross examination of P.W.8 that No.2 accused would, in his evidence deny that he took the police to Maputsoe and T.Y. as alleged by P.W.8. As has been pointed out earlier No.2 accused did not go into the witness box to give that evidence. The evidence of P.W.8 on this point remains unchallenged and there is no good reason to reject it.

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The evidence of P.W.3 D/W/O Raleaka, was that following the explanation of No.1 accused he was taken to a certain farm by the name of IDA in Virginia, the Republic of South Africa by a certain Claudia Nthafa, a secret lover of No.1 accused. The reason why he could not go there with No.1 accused was that the latter had allegedly no passport and there was fear that he might abscound if taken out of this Court's jurisdiction. At IDA farm they went to a certain farm house where No.1 accused and Claudia allegely stayed whenever they visited Virginia. From that house Claudia produced exhibits 10, 11, 12, 13 and a pair of Khaki trousers. P.W.3 took possession of all these articles and later showed them to No.1 accused who explained that the pair of Khaki trousers was his own property. P.W.3 then released it to him. The accused further explained that he used exhibit 12 which was his own property, to stab the deceased from whom he took exhibits 10, 11 and 13. No.1 accused denies that he claimed the knife exhibit 12 as the one he stabbed the deceased with. I find it highly improbable that P.W.3 would fabricate against him on the question of the identity of the knife. In any event No.1 accused has made a confession before a magistrate in which confession he admitted to have stabbed the deceased with a knife. Whether that was exhibit 12 or any other knife is not material in my view.

P.W.4 Krista Lewis, and P.W.5 Amay Mowery, were called to tell the court that after they and the deceased had come to Lesotho there was a time when they each stayed in the same house with the deceased and came to know some of her

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belongings which definitely included exhibits: 1, 3, 4, 5, 7, 8, 9, 10, 11 and 13.

P.W.6, Valerie Reynelds, also came to Lesotho together with the deceased with whom she attended training. She knew the deceased as a gentle and almost shy person. She dismissed the suggestion that deceased could have attacked No.1 accused as highly improbable.

Apart from confirming P.W.1's evidence that she identified the body of the deceased at the post mortem examination P.W.7, the Director of the Peace Corpse in Lesotho, assured the court that in terms of the Peace Corps regulations members of her organisation were not permitted to possess firearms and any suggestion that in October 1984 the deceased was in possession of any such weapon would be highly improbable if not indeed false.

I must say I also consider it unlikely that the deceased who had, on the evidence, recently arrived in Lesotho could have been in possession of a firearm contrary to the rules of her organisation. P.W.9, John Moholeng, testified that No.1 accused used to be a conductor for his passenger bus. From May up to November, 1984 the bus was undergoing repairs at his home following a road accident in which it was involved. Accused 1 used to come and assist people who were doing the repairs. He would then give the accused the money he used to pay him as ration (i.e. money to buy food) when he was the conductor on the bus. He did this because he considered accused 1 as one of his reliable employees and he liked him very much.

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However, one Saturday in October, 1984 accused 1 disappeared and did not come to assist the people who were doing the repairs on the bus. He returned on Thursday 1st November, 1984 at about 2 p.m. Like all bus conductors accused 1 used to be rather shabby in appearance. But when he came to his place on the afternoon of 1st November, 1984 accused 1 surprised P.W.9. He was unusually smart. He was wearing a beautiful pair of trousers with red and black colours (Exh.8), a grey top of a track suit (Exh.13) a beautiful wrist watch and carrying an expensive Radio Cassette (Exh.1) from which a tape cassette was playing music. P.W.9 could see that the cassette and not the radio was playing the music because the tape was rotating on the radio cassette. When he asked him where he had acquired the beautiful articles from, accused 1 replied that he had obtained them from the Orange Free State, in the Republic of South Africa. P.W.9 fencied accused's watch and radio cassette and asked him if he could sell them to him. Accused 1 accepted P.W.9's offer of M50 for the radio cassette. As P.W.9 wanted the watch for his wife the accused told him that he had a beautiful ladies watch at his house and could sell that one to him.

According to P.W.9 he had no cash with him on that day and so he agreed with accused 1 that the latter should come to his place with the watch and the radio cassette on the following day, 2nd November 1984. However, accused 1 did not turn up on the following day. Instead P.W.3, P.W.8 and Sgt. Mokheleli came looking for accused 1 whom they suspected of the murder of the deceased. This is confirmed by P.W.8. Indeed, No.1

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accused himself did not dispute that on the day in question he called at the place of P.W.9 carrying the radio cassette and dressed in the manner described by the witness. He conceded to have told P.W.9 that he had been to the Orange Free State where P.W.9, who was a diamond smuggler, used to send him. He denied, however, to have agreed to sell the radio cassette and the watch to P.W.9.

I must say I observed No.1 accused and P.W.9 as they testified from the witness box and P.W.9 impressed me as a more reliable witness than the accused. Wherefor I prefer to accept P.W.9's story where it differs with that of the accused.

In his evidence on oath No.1 accused denied that he had anything to do with the death of the deceased. He, however, admitted that he was employed as a gardener by the deceased. That was in the middle of September, 1984. He admitted that the articles alleged to have been the property of the deceased were found in his possession but argued that, with the exception of one or two which were his own property, the articles were in the middle and the beginning of September and October 1984, respectively, given to him as gifts by the deceased.

Shortly before the death of the deceased he had applied for leave as he wanted to go to Virginia in the Orange Free State, Republic of South Africa. He was going there to sell dagga and so he borrowed the deceased's bag (Exh.9) to contain the dagga. It was only after returning from Virginia that he learned of the death of the deceased.

The deceased's radio cassette (Exh.1) had according

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to No.1 accused, its cassette portion not functioning properly and so the deceased asked him to take it with him to the Republic of South Africa for repairs. He denied, therefore, the evidence of the police that he told them that he had taken the radio cassette and the other property from the deceased's house after attacking her.

It is worth noting, however, that all the police witnesses viz. P.W.2, 3 and 8 testified that No.1 accused's explanation was that he had obtained all the articles from the deceased after attacking her. There was no mention that No.1 accused ever said he lawfully obtained any of the articles from the deceased. I consider it unlikely that all these police officers could have hidden such information and decided to fabricate against accused 1 on this point. If, indeed, it were true that accused 1 lawfully obtained, for example, exhibits 1, 8 and 13 from the deceased why then did he tell P.W.9 that he had obtained them from the Orange Free State. Why did he agree to sell exhibit 1 to P.W.9 when, according to his story, the deceased had asked him to take it for repairs? I have no doubt in my mind that the accused is not a truthful witness.

Now, coming back to her evidence P.W.10, who did the washing and cleaning for the deceased, was corroborated by P.W.4 and P.W.6 that the bulk of these exhibits, including exhibit 1, allegedly found in the possession of No.1 accused were still in the deceased's house shortly before her tragic death at the end of October 1984. There is simply overwhelming evidence against No.1 accused's

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story that he lawfully obtained these articles from the deceased in the middle and the beginning of September and October 1984, respectively. I am convinced that he was making a clean breath when he told the police that he had obtained them from the deceased's house following his attack on her.

However, the statements/explanations which the accused made to the police, in my view, amount to confessions which are inadmissible unless reduced to writing in the presence of a magistrate, in terms of the provisions of s. 228 (2) of the Criminal Procedure and Evidence Act, 1981. In this regard there was however the evidence of Mr. T. Nomcgongo, the magistrate, who told the court that the two accused did appear before him and make statements. Indeed, No.1 accused conceded having made the statement but contended that it was not freely and voluntarily made for the police had previously been assaulting him and No.2 accused. They even lost a tooth each and bled profusely as a result of that assault. In his evidence No.1 accused further told the Court that one of the people to whom he reported this was the Prison Officer, Elliot Khotle, who even gave him treatment at the Leribe Prison.

Elliot Khotle was however called as a witness by the court. He testified that at no stage did either of the accused report to him that he had lost a tooth as a result of the assault perpetrated on him by the police before he was remanded in custody. In fact No.1 accused had one of his teeth extracted whilst he was already in prison but he never said that was the result of any

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assault on him.

Be that as it may, I made a ruling, during the course of this trial that the statements which the accused made before the magistrate were freely and voluntarily made. The only question that is to be decided now is whether or not the contents of those statements in fact, amount to a confession.

Now in his statement No.1 accused told the magistrate that, on the day in question, he, in the company of another person (whom he did not name) went to deceased's house and demanded his pay when the latter refused and threatened to go for a gun with which to shoot him. He then caught hold of the deceased who, however, knocked him down with her head. He then tripped the deceased who was trying to jump over him, pulled a knife from one of his pockets and inflicted five stab wounds on the deceased before taking her belongings from her bedroom.

The statement of No.2 accused to the magistrate was to the effect that, on the day in question, he did accompany No.1 accused to the deceased's house. He, however, waited at the gate while No.1 accused entered into the house. No.1 accused took too long in the house and he (No.2 accused) had to leave him and return home. He did not, therefore, know if anything happened between No.1 accused and the deceased in the house.

It seems to me that No.2 accused's statement to the magistrate amounted to no confession at all, and his statement to the police remains inadmissible confession. There can be no doubt, however, that what No.1 accused told the magistrate was that he was the one who had

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inflicted the five (5) stab wounds that, as has been pointed out earlier, resulted in the death of the deceased. That, in my view, confirmed what the police said he told them and, when it was said before the magistrate, amounted to an admissible confession. Now s. 240(2) of the Criminal Procedure and Evidence Act, 1981 provides:

> "Any court may convict a person of any offence alleged against him in the charge, by reason of any confession of that offence proved to have been made by him, although the confession is not confirmed by any other evidence, provided the offence has, by competent evidence other than the confession, been proved to have been actually committed."

I have already found that on the evidence of both P.W.8 and P.W.1 the deceased was stabbed five wounds which took her life. There is evidence, therefore, that the deceased, in this case, was killed. That, in my opinion, takes care of the proviso to s. 240(2) of the Criminal Procedure and Evidence Act, 1981. Granted that No.1 accused's statement to the magistrate amounted to a confession it must be accepted that to the question that I have earlier posted viz. who had inflicted the injuries and, therefore, caused the death of the deceased, the reply must clearly be No.1 accused did.

When he inflicted the five (5) stab wounds on the upper portion of the body of that defenceless girl, No.1 accused must have realised that death was likely to result. He, nevertheless, acted reckless of whether or not death occurred. There is, therefore, no doubt in my mind that No.1 accused had the requisite subjective intention to kill, at least, in the legal sense.

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I was told in argument that in his statement to the magistrate No.1 accused said he stabbed the deceased in the course of a fight and, therefore, acted in self-defence. I am unable to accept this argument. In his own words No.1 accused told the magistrate that before he inflicted the five (5) stab wounds on her, he had tripped the deceased. If No.1 accused were to be believed on this, the deceased must, naturally, have fallen down at the time he started stabbing her with the knife. There was obviously no immediate danger to No.1 accused's life at the time and, therefore, no need to stab the deceased. In my view the defence of self-defence cannot avail him.

I have already said accused 2's statements to P.W.8 that he had obtained certain of the deceased's belongings on 30th October 1984 when they had attacked the deceased at her house amounted to a confession which had, in terms of the provisions of s. 228(2) of the Criminal Procedure and Evidence Act 1981, to be reduced to writing before a magistrate if it were to be admissible. The statement he made before the magistrate did not, however, amount to a confession. P.W.8's evidence that accused 2 took him to Maputsoe and T.Y. where he was to point out a certain person to whom he had allegedly sold some of the deceased's belongings was a fruitless exercise for nothing was found. It could not, therefore, amount to evidence of pointing out.

In the result I am not convinced that there is sufficient competent evidence on which No.2 accused can be convicted in this matter. There is, however, ample evidence connecting No.1 accused with the commission of

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this crime.

I would, therefore, acquit and discharge No.2 accused. No.1 accused is, however, found guilty of murder as charged.

My assessors agree.

J U D G E.

16th June, 1986.

EXTENUATING CIRCUMSTANCES.

Having convicted the accused of murder we are now enjoined by the provisions of S. 296 (1) of the Criminal Procedure and Evidence Act, 1981 to determine whether or not there are any factors, connected with the commission of this offence, tending to reduce the moral blameworthiness of his act This is a question of extenuating circumstances which presupposes a finding of legal guilt. The moral and not the legal blameworthiness of the accused's act is, therefore, relevant. As Schreiner J A succinctly put it in R. v. Fundakubi 1948 (3) S.A. 810 at 818 :

> " ..... no factor, not too remotely or too faintly or indirectly related to the commission of the crime, which bears upon the accused's moral blameworthiness in committing it can be ruled out of consideration."

Although the accused in this case denied to have had anything to do with the death of the deceased I dismissed that as being false. What I accepted was the confession he had made before the magistrate.

Assuming the correctness of my decision in this regard it well be remembered that in his confession the accused told the magistrate that on the day in question he had gone to collect his pay from the deceased who, however, refused to pay him and threatened to shoot. True enough, there was evidence that the deceased was unlikely to be in possession of a firearm with which she could shoot the accused. I accept that. But it does not exclude the possibility that the deceased may have threatened to shoot in order to scar away the accused who, rightly or wrongly, believed that she was in possession

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of a firearm with which she could carry out her threat.

I may be wrong in all this, but the diffuculty is that there is no evidence to gainsay what, in his confession, the accused told the magistrate. I have, therefore, only the accused's unchallenged story to the magistrate which suggests, in my view, the existence of an element of provocation and the absence of premeditation. It is my opinion that these two factors may properly be taken into account for purposes of extenuating circumstances.

I have no alternative, therefore, but to come to the conclusion that extenuating circumstances do exist in this case and the proper verdict is that of guilty of murder with extenuating circumstances.

I must, however, mention that one of my assessors does not agree with this finding and has a strong suspicion that the accused may well have gone to deceased's house with the intention to rape her. When the deceased resisted that unlawful attack on her the accused then decided to brutally stab her to death.

SENTENCE : 15 years' imprisonment.

J U D G E.

24th June, 1986.

For Crown : Mr. Seholoholo
For Defence : Mr. Mohau.