

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

MOJALEFA MOTSELEKATSE
KHABANE MASELOA

J U D G M E N T

Delivered by the Hon. Mr. Justice B. K. Molai
on the 23rd day of June, 1986.

The accused appear before me charged with the crime of murder, it being alleged that on or about 7th April, 1985 and at or near Ha Motsoene in the district of Berea they, each or both, unlawfully and intentionally killed one Fusi Motselekatse.

At the commencement of this trial Mr. Pitso, who represented the accused, informed the court that the defence was admitting the depositions of Puseletso Litali, 'Malelingoana Patela, 'Mamapele Matsitsa, 'Maseoeng Litali, Macheli Motselekatse and Dr. Patrick Sendyose who were, respectively, P.W.1, P.W.2, P.W.3, P.W.6, P.W.7 and P.W.8 at the proceedings of the preparatory examination. Mr. Thetsane, for the Crown, accepted the admissions, made by the Defence counsel, and the depositions became evidence, in terms of the provisions of S. 273 of the Criminal Procedure and Evidence Act, 1981. It was therefore, unnecessary to call the deponents as witnesses in this trial.

/The Court

The Court heard the evidence of P.W.1, L/Sgt. Masupha, who testified that on 7th April, 1985 he received a certain report following which he proceeded to the house of Mamapele Matsitsa, in the village of Ha Motsoene where he found a dead body of a man inside the house. The body was identified to him as that of the deceased. There were three pieces of a broken stick found in the house. He took possession of, and handed, them in as exhibit 1 in this trial. P.W.1 went on to say after it was identified to him he examined the body and found that it had sustained multiple injuries on the neck, shoulders, arms, chest, armpit, thighs, legs and feet. He counted altogether 17 wounds on the body of the deceased.

After examining it P.W.1 conveyed the body of the deceased to T.Y. mortuary and it sustained no additional injuries. He then continued with his investigations.

On 13th May, 1985 No.1 accused surrendered himself to the police when he cautioned and charged him with the murder of the deceased. Whilst in police custody No.1 accused gave him information following which he (P.W.1) and the accused proceeded to No.2 accused's home at Ha Makola. They found No.2 accused not in. His wife was, however, in and she handed a sword to P.W.1 who took possession of it. It is exhibit 2 before this Court.

When later on No.2 accused also surrendered himself to the police, P.W.1 confronted him with exhibit 2 and he identified it as his property. This is, however, denied by No.2 accused.

It is to be observed that when he was asked whether

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before No.2 accused could tell him that exhibit 2 was his property he had warned him that he was a suspect and therefore, not obliged to say anything and should he decide to do so, that would be reduce to writing and could be used as evidence against him at a later stage, P.W.1 told the court that he did so only after No.2 accused had identified exhibit 2 as his property. When he was made to realise that he should have warned the accused whom he already regarded as a suspect, in terms of the Judges' Rules before the accused could say anything to him P.W.1 somersaulted and said he had, infact, administered the warning before No.2 accused could speak.

I am sure that P.W.1 was not being truthful to this Court. The truth of the matter is that he did not warn the accused at all, and he was committing perjury by making two contradictory statements on oath before this Court.

Be that as it may, the evidence of P.W.1 that he found the body of the deceased with multiple injuries was corroborated by that of Dr. Patrick Sendyose in whose deposition, at the proceedings of the preparatory examination, he told the Court that he was the medical doctor who performed the post mortem examination on the body of the deceased. He confirmed the evidence of Macheli Motselekatse that the latter had identified the body as that of Fusi Motselekatse, the deceased. The doctor's findings also confirmed that there were altogether 17 injuries as described by P.W.1. He formed the opinion that although some of the injuries could have been inflicted with a blunt instrument, the bulk of them was consistant with the use of a sharp instrument. From his findings Dr. Patrick

/Sendyose

Sendyose concluded that death was due to Cardiac Tamponede and haemothorax resulting from the injuries inflicted on the deceased.

As the medical evidence was not challenged, I can think of no good reason to disbelieve it. I am prepared, therefore, to accept that the deceased died as a result of the injuries inflicted on him.

The question that immediately arises is whether or not the accused are the persons who inflicted the injuries that deprived the deceased of his life. In this regard, it is, perhaps, helpful to outline briefly the events leading to this unfortunate death of the deceased.

It would appear that prior to 1976 a woman by the name of Makaizer owned a field in the area of Ha Motsoene. There was a time when she went to work in the Republic of South Africa. Before leaving for her place of work 'Makaizer and the deceased concluded an agreement whereby the latter was to plough the field on half shares with her. In 1976 P.W.2, Tseliso Motsoene, the chief of the area realised that the deceased was no longer ploughing the field on half shares with 'Makaizer. He was taking all the harvest from the field to his house and using it for himself. P.W.2 was dissatisfied with this state of affairs. He then wrote a letter to 'Makaizer notifying her that as she was no longer using it the field had reverted to the chieftainship for reallocation. He accordingly reallocated the field to one Kori Motselekatse, the father of No.1 accused, in 1976. I must point out that the fact that the deceased took all the harvest from that field for his own benefit in breach of his agreement with

/'Makaizer

'Makaizer was no basis on which P.W.2 could lawfully deprive that woman of her rights on the field. It was a matter purely between the deceased and 'Makaizer. P.W.2 had no business in it.

Be that as it may, the decision of P.W.2, depriving 'Makaizer on her field and re-allocating it to Kori Motselekatse, was, however, set aside and rightly so in my opinion, by P.W.2's senior chief and the decision of the senior chief was made known to Kori Motselekatse who, however, ignored it and continued to plough the field on half shares with his son-in-law, No.2 accused.

The deceased who, as has been pointed out earlier, had been using the field following his arrangement with its owner was unhappy with the attitude of Kori Motselekatse who was, in fact, his own elder brother. This created bad blood between the deceased and Kori Motselekatse.

In their evidence the two accused told the court that they normally worked in the mines, in the Republic of South Africa. In 1984 they were on leave here at home in Lesotho when they received reports that the deceased was in the habit of unlawfully taking maize, pumpkins and watermellons from the field.

On the day in question, 7th April, 1985, the two accused were returning to their place of work, in the Republic of South Africa, following a short leave at home. As they walked towards the bus stop, outside the village, the two accused noticed that there was a person in the field. They decided to go to that person and find

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out what business he had in the field.

As they approached the field, that person left and took the direction towards the village of Bethania. They identified that person as the deceased who was clearly carrying something in his blanket. The accused, however, went to the field and inspected it for any possible damage. They found that maize cobs had definitely been recently broken and taken away. They then followed the direction taken by the deceased.

As they appeared in the village the two accused saw the deceased next to a church and he was giving maize cobs to people who had come to church for Easter services. When he saw the two accused coming towards him, the deceased left the people to whom he had been giving away the maize cobs. The accused followed and caught up with the deceased when he was next to the house of 'Mamapele Matsitsa. No.1 accused was the first to come to the deceased and No.2 accused was following about 9 paces (indicated) behind.

When he caught up with him No.1 accused asked the deceased why he had been causing damage in the field by taking maize cobs. The deceased's reply was that he would not be talked to in that manner by small children. No.2 accused then rushed at the deceased when the latter, who had pulled out a knife tried to stab him. No.2 accused caught hold of the knife which cut him on the hand. He however, managed to take the knife from the deceased who then ran into the house of 'Mamapele.

When the deceased ran away, No.1 accused went to his house leaving No 2 accused still holding the deceased's

/knife.

knife where the latter had injured him. At his house which was about 50 paces (indicated) away No 1 accused armed himself with the stick, exhibit 1, and returned to No 2 accused. They then followed the deceased to the house of 'Mamapele which was also a distance of about 50 paces (indicated) from the house of No 1 accused. I shall return to the evidence of the two accused in a moment.

In her evidence 'Malelingoana Patela testified that she was a married daughter of 'Mamapele Matsitsa. On 7th April, 1985 she was visiting her maiden home at Ha Motsoene when, in the early morning, the deceased came to their house. The deceased appeared relaxed and asked for a brown paper with which to prepare his tobacco for a smoke.

About ten (10) minutes after the deceased had come into the house, the two accused also arrived. As they entered into the house the two accused passed her next to the door way, kicked aside her small child and headed straight to where the deceased was seated in the house. They were clearly in a fighting mood and so the witness quickly picked up her little child and cleared out of the house, leaving her mother, 'Mamapele Matsitsa, who had been making her bed. The witness could not, therefore, see what took place in the house between the two accused and the deceased.

Once she was outside the house 'Malelingoana raised an alarm by shouting: "Here are people fighting in the house." On the instruction of 'Mamapele who had also come out of the house and was raising the alarm she ('Malelingoana) rushed to the chief and made a report. This was confirmed

/by P.W.2

by P.W.2 who said he then went to 'Mamapele's house where he found the deceased dead. He then sent a report to the police. The evidence of 'Malelingoana was, in as far as it is material, also corroborated by that of 'Mamapele Matsitsa.

Both 'Maseoeng Litali and Puseletso Litali confirmed that, on the morning in question, they heard the alarm raised by 'Malelingoana and 'Mamapele. As a result they proceeded to the latter's house where they found the deceased dead.

Returning to their evidence, the two accused told the court that when they followed the deceased No 2 accused was the first to enter into 'Mamapele's house and he was immediately followed in by No 1 accused. Although he denied that after passing 'Malelingoana next to the doorway he kicked aside her little child, No.2 accused admitted that he went straight to the deceased and started stabbing him with the knife he had taken from him. He denied, therefore, to have used the sword that was allegedly received from his wife. No.1 accused also confirmed that as he followed No.2 accused into 'Mamapele's house the latter was already stabbing the deceased with his (deceased's) knife. He joined No.2 accused in his assault on the deceased by delivering blows on the latter with his stick, exhibit 1, which even broke into pieces. They eventually went out leaving the knife and the broken pieces of exhibit 1 in the house.

Well, if in his own mouth No.1 accused was aware that No 2 accused was assaulting the deceased with a knife and joined him by hitting the deceased blows with his stick

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deceased. The accused, therefore, knew the person they wanted. That being so, it cannot be said they were so provoked as not to know what they were doing. In the premises, the accused's provocation, if any at all, cannot have been such that it could reduce the crime of murder to a lesser offence.

Finally the fact that the accused inflicted on the deceased, a total number of 17 wounds, many of which were concentrated on the upper part of the body, leaves no doubt in my mind that they must have realised that death was likely to result. They, nonetheless, acted reckless of whether or not death did occur. That being so, it must be accepted that when they assaulted the deceased in the manner they did, the accused had the subjective intention to kill. .

I would, therefore, find both accused guilty of murder as charged.

My assessors agree.

J U D G E.

20th June, 1986.

EXTENUATING CIRCUMSTANCES

There was evidence, which I accepted, that the deceased was seen unlawfully taking maize cobs from the field which No.2 accused and Kori Motselekatse, the father of No.1 accused, had cultivated albeit wrongfully. That, in my view, was provocation to the two accused by the deceased. Even if it were such that it could not reduce the crime of murder to culpable homicide such provocation must properly be taken into consideration for purposes of extenuating circumstances.

Moreover, it would appear, from the evidence that the accused did not actually plan or premeditate the death of the deceased. In itself the absence of premeditation seems to be a factor tending to lessen the moral blameworthiness of the crime committed by the accused - See page 365 of Hunt in his invaluable work : South African Criminal Law and Procedure Vol. 11.

From the foregoing it seems to me there are extenuating circumstances in this case and I find accordingly. Both my assessors agree with this finding.

SENTENCE :

The court was invited to take into account, for the benefit of the accused, the facts that both accused are first offenders, the deceased is their own relative, by unlawfully taking the produce of the field admittedly cultivated by No.2 accused and the father of No.1 accused the deceased was himself provocative to the accused and P.W.2's unjust decision to re-allocate to Kori, 'Makaizer's field which the deceased had all along been using was the

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real cause of the accused's trouble in this matter.

I am prepared to consider these factors. However, even if the deceased had wronged them the accused should not have taken the law into their own hands and killed him. They should have taken the deceased to Court to be punished in due process of the law.

Moreover this Court has, time and again warned that it will take a rather dim view of people who show no respect for the life of their fellow humans. If only a repetition of this kind of a thing were to be brought to a halt it is necessary to impose upon the accused sentences that will be commensurate with the seriousness of the offence they have committed.

I have taken into consideration that although it was found that the two accused had acted in concert in their assault on the deceased and were, therefore, both rightly convicted of murder, the bulk of the 17 wounds on the deceased were however, inflicted by No.2 accused and for that reason I have come to the conclusion that the sentences of 10 years' imprisonment and 8 years' imprisonment for No.2 accused and No.1 accused, respectively, are appropriate. They are accordingly sentenced.

J U D G E.

23rd. June, 1986.

For Crown : Mr. Thetsane
For Defence : Mr. Pitso.