

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

NTOBE MOKOATLE

Held at Butha-Buthe

J U D G M E N T

Delivered by the Hon. Acting Mr. Justice M. Lehohla
on the 2nd September, 1988.

The accused in this case is charged with the unlawful and intentional killing of one Busumane Mokone. The killing is alleged to have occurred on 26th November 1986. Accused pleaded not guilty.

On behalf of the accused his counsel Mr. Pitso admitted the depositions of P.W.1, Makoatle Moilola, P.W.6 Detective Trooper Nchai, P.W.7 Detective Trooper Letsoepa at preparatory examination that was held at Mokhotlong. A copy of post mortem report EX."A" was handed in also by consent.

Dr. M. Ganuash who prepared EX."A" gave findings as to external appearance as follows : Three wounds on the body consisting of

1. penetrating wound on left sternal edge.
2. penetrating wound on lower left chest measuring 5 cm. in length.
3. extensive penetrating wound to the left of lower stomach region resulting in the protrusion of small intestines.

/A laceration

A laceration of left ventricle optical region was observed in relation to the items reflected on the schedule of observation as pericardium and heart. Another laceration was observed on the left lung. Massive faecal matter was observed in the peritonium (body cavity). The spleen was ruptured as well as the small intestines.

P.W.2 Qetelo Matata testified that he knows accused as well as the deceased because they lived together in the same village.

Deceased used to stay in the houses of this witness at Motsitseng Mokhotlong. He further testified that these houses previously belonged to one Petlella from whom P.W.2 bought them.

The purpose of buying these houses was that P.W.2's junior wife should occupy them. But when the junior wife deserted him and went to live in Natal they were occupied by deceased and his wife. Deceased renovated them and stayed in them for over ten years. In fact P.W.2 said when his junior wife deserted him he no longer wanted these houses.

When P.W.2 bought these houses from Petlella he testified there was a kraal which he said he knew nothing about.

However in November 1986 accused came to P.W.2 one afternoon to report that deceased was dismantling the kraal; and asked this witness to prevail upon deceased to desist from doing so for accused had in fact lodged a case which would be attended the following day.

Thereupon P.W.2, P.W.1 Moilola and accused went towards deceased's place but Moilola remained at his house while the other two i.e. accused and P.W.2 went ahead and found deceased sitting alone outside his home.

/P.W.4

P.W.4 deceased's relative called Koebela Mokone and his wife were inside the house.

Accused went past and stood between the two kraals. It is common cause that these kraals are divided by an adjoining wall through which there is entrance leading from the only kraal which has external exit.

The significance of these kraals in these proceedings is to provide a background to the fact that the kraal without external entrance was used by the deceased to keep his horse there while the one with external exit was used by accused to keep his cattle and calves.

Because of the differences between deceased and accused it appears the former decided to create an exit on the wall of the kraal where he used to keep his horse. However the question of the ownership of these kraals is not a subject matter for resolution in these proceedings save that their existence provide a background to events that led to the death of deceased. Suffice it to say deceased regarded the kraal as his while accused on the other hand maintained it belonged to his family.

The eye witness P.W.4 Mokone said on the day in question he was at deceased's home in the company of his mother P.W.5 Makoebela when he saw P.W.2 coming and speaking with deceased about a kraal. P.W.2 asked whose the kraal was and deceased said it was his while accused said it was his own father's.

Deceased drove a horse into it. Apparently P.W.2 having transmitted P.W.1's message to deceased to refrain from touching the kraal considered that this was the end of his mission and thus feeling disinclined to get involved in the apparent fight that was obviously brewing, left. However he had occasion to warn both accused and deceased to stop being boyish when the two had retreated into their respective homes and shortly emerged each armed with a stick.

/P.W.4

P.W.4 testified that when deceased brought his horse into this kraal accused ordered a herdbooy to drive cattle into it. Deceased drove them out. Accused had apparently joined in the driving of cattle into the kraal without external exit. The fat was immediately in the fire! Deceased hit accused with a cane stick. P.W.4 is not certain where the blow landed but he observed that it was aimed at accused. It is common cause that deceased struck accused with a cane stick.

P.W.4 testified that he hurried to the scene to intervene but found accused already stabbing deceased with a knife. When P.W.4 reached deceased accused had just scaled the kraal wall and run still with his unclasped knife in one hand.

This witness attended to the deceased and sought help of P.W.3 and 5 to help carry deceased into the house where he soon died.

There is no doubt that ill blood existed between deceased and accused. Yet the court is called upon to determine on the facts adduced in evidence the innocence or otherwise of the accused with regard to deceased's death.

Abundant evidence has been adduced to show that deceased was a weakling with a swollen foot or leg usually hobbling along on his cane stick with a limp.

Mr. Mokhobo for the crown submitted that actus reus has not been denied in these proceedings but what remains to be determined is whether the defence of self defence avails accused at all. He submitted that accused was averting a lawful attack. However Mr. Pitso for the defence pointed out that courts of law exist solely for the purpose of resolving disputes among people. There is merit in this submission.

But it is a well known principle of law no doubt

/founded

founded on good sense that a swipe with a fly swatter cannot justify a response with a sledgehammer. Indeed the initial attack by the accused on deceased warranted accused's counter-attack. It was important though that means used in the endeavour should be sufficient to ward off the apprehended danger.

Mr. Mokhobo submitted that deceased could not have been in a position to strike a fatal blow on the accused. I did take the cane stick to feel how heavy the bigger remaining part of it was. It felt quite light. Although the crown maintained accused was attacked by a man who could not run, relying on evidence before court Mr. Pitso submitted that deceased's weakness should not be over inflated for he was seen walking into his house to take a stick yet the crown had sought to show he could go nowhere without the aid of that stick.

But on the other hand accused conceded that he could see when deceased approached that he was in a violent mood and would have averted the encounter by running away. The crown submitted accused had ample time to run away but did not.

Accused in his own words testified that in a man to man fight he could have given deceased one blow with a fist and sent him rolling over. This because deceased was weak and of very spare frame.

It was thus submitted there was no need to stab the deceased.

One feature that is striking about the nature and location of the wounds is that the wounds tend to give a lie to accused's story that he was inflicting them at random. There is marked consistency of the side of the body that sustained injuries namely the left. There is consistency of the particular place on deceased body that suffered two injuries namely the region of the breast opposite the heart and left lung. These factors seem to favour deliberateness in the aim taken to inflict

/injury

injury at a particular spot which happens to be a vital part of the body.

Accused was hard put to it to show how the attack continued being maintained by deceased against him even when the first two blows had been inflicted. It is incredible that the force of the attack by deceased could not have been diminished by the first stab wound. More incredible still after the second.

I consequently came to the conclusion that accused exceeded the bounds of self-defence. Hence he is guilty of murder.

Extenuating circumstances were shown to exist the effect of which was to spare accused from the extreme penalty.

In mitigation the following points were raised:-

1. Accused was provoked.
2. Society in which he lives has to be taken into account.
3. He reported himself to the nearest police station.

Accused has no previous convictions.

Accused: He has no previous convictions.
He is married man.
He has kids, wife and old mother. Between 13 and a month.

Finally he is not a man of education.
He is about 30.

Sentence : Sentenced to 8 years' imprisonment.

ACTING JUDGE.

2nd September, 1988.

For the Crown : Mr. Mokhobo

For the Defence: Mr. Pitso.