

IN THE HIGH COURT OF LESOTHO

In the matter of:

R E X

v

RAMANAKA TLHAKOLA

JUDGMENT

Delivered by the Hon. Mr. Justice Sir Peter Allen
on the 24th day of May 1988

The accused is indicted on a charge of murdering one Mofotha Majoro on 3 February 1986 at Mahlanyeng in Roma. The accused is a 42 years old businessman and traditional doctor.

At the end of 1985 the accused decided that he wanted to purchase a large refrigerator for his butchery in Roma. The deceased, aged about 41 years, was apparently a customer at the butchery and an acquaintance of the accused but not a friend. The accused was told that the deceased had an account at a store in Maseru which sold refrigerators among other items. He approached the accused and they went to the shop together and a gas refrigerator was selected. The accused said that he paid M800 on the deceased's account as a deposit on the refrigerator which was to be ordered and collected later. A receipt was issued in the deceased's name and he kept the receipt for the accused.

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Three weeks later the accused had still not received the refrigerator so he went to see the deceased who said that he had not been into Maseru to enquire about it. It was agreed that they would both go to the shop on Monday 17 January 1986. On that morning the accused went to the deceased's house but he was not there. The deceased's wife, Mathethi Majoro (PW3) told the accused that the deceased was out in the Roma area somewhere. The accused waited until noon but the deceased did not appear. The accused told Mathethi that he would return on the following morning and that she should tell the deceased to be there. However, he was not there the next day and, according to the accused, he went about ¹⁵ times thereafter and could not find the deceased.

The accused then went very early, at about 5.00 a.m., on Friday 31 January and found the deceased in bed. The accused demanded the receipt and the deceased searched among some of his papers and handed one over to the accused. But it proved to be only a dry-cleaning slip and the accused rejected it. The deceased shouted at his wife but she said she did not know where the receipt was. The accused told the deceased to get his passport to prove his identity and they would go to the store in Maseru and explain about the lost receipt. The deceased refused saying that he was not an errand boy for the accused.

The accused became angry and so the deceased agreed to go to Maseru with him. They went to the bus stop but instead of getting on to a bus to Maseru the

/deceased ...

deceased got into one and went towards the University. The accused followed him and the deceased went into the police station and made a report against the accused and stated that he did not know the accused at all. The police told them to go outside and settle their dispute. The deceased agreed to refund the money to the accused on the following Tuesday, 4 February, but he did not do so because he was dead by then.

Before that, according to the deceased's widow, Mathethi (PW3), the accused came to their house again on the evening of Sunday 2 February asking for the deceased, who was not there. She said that the accused was angry and that he told her to tell the deceased that he (the accused) had been to see him and that the accused added, "I could be killing these children but I have got no grudge against them. I want the owner of the house."

The accused was in an angry mood and carrying a stick. When he left, Mathethi went towards her parents' home but met the deceased on the way and told him of the incident. The deceased reported the threats made to his family by the accused to Det. Trooper Mosili of Roma police. His testimony was admitted.

The next day, Mon. 3 February 1986, in the late afternoon the accused went to Mamokhukhu's place at Mahlanyeng village to drink Sesotho beer. He was sitting with various drinking friends, including Tsotsi Monaheng (PW1). The deceased arrived outside in the road. He was with Rampolla Matobo (PW2) and the late Ts'ele.

/The deceased ...

The deceased remained in the road while the other two went inside to drink beer. The deceased called out to the accused using his nickname "Koete" asking him to come out to speak to him. Tsotsi said that the accused replied, "I won't come there." The deceased called again and the accused went towards him. The two of them walked some distance away out of the hearing of the witnesses so as to talk privately. There is thus only the testimony of the accused for what they said to each other.

According to the accused the deceased said that he had heard from some people that the accused had been saying that the deceased had eaten his money. The deceased then added that the accused would get his money at "the junction of hanyenye". He then said, "Your mother's vagina" and started to punch the accused on the chest.

The witness Teboho Letuka (PW4) said he came along the road and saw the deceased punching the accused and challenging him to fight. The deceased then tried to remove a pole from the fence but it was held in place by wire so he failed to pull it out of place. He returned to the accused and punched him again. Letuka said, "Men, what you are doing is not good." They ignored him and the deceased punched the accused again saying, "When are you going to fight?"

The accused then produced his knife (exhibit 1) and stabbed the deceased in the chest. The deceased called out to Ts'ele who was in the bar. "Tsele, bring your stick. This person is finishing me."

/The witnesses...

The witnesses Tsotsi (PW1) and Rampolla (PW2) and others went to see what was happening. Letuka (PW4) said to them, "You see, I've been telling you not to do this. Now he has stabbed you."

The deceased ran past Letuka, trying to escape from the accused who followed him. The deceased fell down near to a shop and the accused jumped on top of him and knelt on his chest and stabbed the deceased in the chest and stomach a number of times. None of the witnesses made any attempt to help the deceased or to stop the accused. They just stood watching and being completely useless until the accused got off the deceased and walked away to the place he was renting nearby.

The deceased by then was bleeding badly but still alive. He was taken to hospital in a car but he died on arrival at the hospital. Meanwhile Det. Tpr. Mosili was looking for the accused in order to question him about making threats to kill the deceased's children. He was informed of the death of the deceased and he went straight to the accused's home at Mahlanyeng. There he found the accused outside his house with a basin of water washing some blood off his hands. The accused was asked to explain this, which he did. The accused was then arrested and taken to Roma Police Post where the detective was informed that the deceased had just died.

He went to Roma mortuary and examined the body and counted 21 open wounds in the deceased's chest, abdomen and right arm. The body was taken to Maseru

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for post mortem examination by Dr. Joseph (whose testimony and report were admitted). The deceased was identified to the doctor by the deceased's twin brother, Motsarapane Majoro (whose testimony was admitted). In the P.M. report (exhibit A) the doctor found multiple stab wounds in the chest, abdomen and right arm with internal injuries to the right lung and liver and intestines. The doctor's total was 13 wounds and he found that death was caused by excessive internal bleeding.

The accused testified in his defence and he described the quarrel with the deceased over the purchase of a refrigerator as already set out above. He denied threatening to kill the deceased's children but admitted that he was very angry about being cheated out of his money by the deceased.

He agreed that he called the deceased to come out of the bar so as to speak to him about the matter. His version of events agreed with that of the prosecution witnesses that the deceased first insulted him and then started punching him and challenging him to fight. The accused stated that the deceased did in fact succeed in pulling up a fence pole and then he hit the accused on the head with it. By then the accused said he had stabbed the deceased four times in the chest in an attempt to stop the assault on him by the deceased. Both continued fighting and the accused stabbed him another four times.

The deceased cried out that he had been stabbed and ran away towards the store. The accused said he chased after the deceased who then fell down by the store. The accused agreed that he knelt on the chest of the

deceased and continued stabbing him repeatedly in the chest and body although the deceased was by then helpless and unresisting.

When asked to explain why he stabbed the deceased so many times and why he continued to do so even after the deceased had fallen down, the accused kept repeating in Court that he had to keep on stabbing "because nobody intervened to stop the fight." He persisted in saying that without intervention by anyone else he had to continue the fight. He could not agree with the suggestion put to him that it was for him to stop fighting whether or not anyone else intervened.

Although the accused was dressed quite smartly in Court and he called himself a businessman, in fact he appeared to be of a very low grade of intelligence and understanding. He was not an impressive witness. It appears that he entirely lost control of himself once he started to stab the deceased, or perhaps he just did not try to control himself.

It seems very likely that the deceased cheated the accused out of his M.800 and the refrigerator. In addition, the deceased acted very provocatively by constantly avoiding the accused's enquiries about it. He was even more provocative on the day in question when he first insulted the accused and then physically attacked him. The accused was entitled to defend himself and it is not surprising that he responded to the provocation offered to him.

However, that did not justify his using a deadly weapon such as the knife, and, in any case, certainly

/not ...

more than once so as to defend himself. There was no justification for the repeated stabbings and, most particularly, for the savage attack on the deceased after he had run away and had fallen down helpless. The accused was then no longer defending himself and the provocation in my opinion was not such as to explain or justify that attack. The accused appears to have lost all control of himself and to have behaved like a homicidal maniac. Whether he stabbed 17 or 21 times it makes little difference. By pursuing the deceased and renewing the attack on him the accused demonstrated a purpose i.e., the formation of an intention to kill.

There was some suggestion by the eye-witnesses that the accused might have been drunk, but in fact there was no evidence of this. The accused himself did not claim that he was drunk. Indeed he was able in Court to explain in detail exactly what happened throughout the incident. He made it clear that he was conscious all the time of what was happening and of what he did. Furthermore, he showed no dismay or horror concerning this murderous attack and he expressed no sorrow or remorse for what he did. In fact he appeared to think that he was fully justified.

I find that he went far beyond what might have been reasonable and justifiable in his own self-defence. I further find that he was undoubtedly provoked by the deceased to a considerable degree. Section 3 of the Criminal Law (Homicide Amendment) Proclamation, 1959 (No. 42/59) provides that such a killing done in the

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heat of passion, caused by sudden provocation before there is time for the accused's passion to cool, reduces the crime from murder to culpable homicide. It is therefore only a partial defence to a charge of murder.

Mr Ngakane for the defence asked the Court to find that the provocation in this case was such that the seriousness of the offence should be so reduced. I think that this might have been possible if the accused had stopped when the deceased ran away from him. But he chose to chase after the deceased and then quite deliberately to kneel on him so that he could not move, after which he continued stabbing him repeatedly. In my view this could not possibly be justified by the sort of provocation offered. It was a clear and deliberate and successful attempt to finish off the deceased.

In the circumstances I am of the opinion that the proper finding and verdict is that the accused was guilty of murder.

However, taking all the circumstances into consideration, most especially the deceased's earlier behaviour in cheating the accused and his later behaviour of acting so provocatively, I am satisfied that there were extenuating circumstances in this case. The Assessors agree with this verdict.

Accordingly, the accused is convicted of the offence of murder in extenuating circumstances.

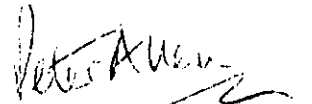
P. A. P. J. ALLEN
J U D G E
24 May 1988

Mr Ngakane for the defence
Mrs Mophethe for the Crown

SENTENCE

The accused is aged 42 years and married with a family, and a first offender. He has been on bail awaiting trial. He was considerably provoked but he stabbed the deceased repeatedly with a knife quite unnecessarily. Such violent behaviour is totally unjustified and unacceptable. Accused must learn that he can not take the law into his own hands. If he really is a traditional doctor his business is to heal not to kill others.

The accused will go to prison for five years.



P. A. P. J. ALLEN
J U D G E

24 May 1988

ORDER

The knife (xhibit 1) is to be destroyed.



P. A. P. J. ALLEN
J U D G E

24 May 1988