CRI/T/56/89

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

SEBOBO PELAELO KHANYANE

Held at Quthing

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 12th day of December, 1989.

The accused is charged here with the crime of murder of one 'Mantu Tsibana on the 1st day of June 1987 at Ha Ramatlali in the district of Mohale's Hoek.

The deceased is alleged to have died on the 2nd June 1987.

The defence admitted and the crown accepted the admission of the defence in respect of the preparatory depositions of P.W.4 Pau Taitai, P.W.6 Shokhoa Kotelo and that of P.W.7 No. 2567 Sgt Moshoeshoe. The crown dispensed with the evidence of P.W.1 'Makasa Ralieta. However, although the defence had admitted the written evidence as it appears in the deposition at the P.E. of P.W.5 Tseliso Moso, the crown nonetheless asked this witness to be called for the purpose of making certain

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clarifications at the end of which, of course, he was subjected to cross examination.

The medical report is at hand, has been submitted marked "A" and it shows that the deceased's death was a result of a septic shock after a general peritonitis that is inflamation of the layer covering the inside of the human torso had been perforated including the stomach. The injuries observed by the doctor are said to have been at the lower chest on the left and they were two in number

The evidence of P.W.2 'Mamolelekeng Ralieta shows that she and Maqenehelo, 'Mantu and other women were at a bar belonging to Kotelo on the 1st June 1987, when during the process the accused came to the scene, and shortly after the accused had arrived, they left. The time of their departure was fixed at 4.00 p.m. When they were a short distance away from the bar the accused came along and grabbed hold of 'Manthabiseng by her blanket on the shoulder and stabbed her on the left side. There and then 'Manthabiseng tried to undo her blanket but fell and fainted.

'Manthabiseng did give her own evidence which shows that during the process of undoing or after she had completed the process of undoing her blanket she touched the spot where the stab had been effected, looked at her hand which she had used for so touching herself, saw blood and there and then passed out. She only came to when she was in the house of a kind neighbouring lady's house.

Indeed it was submitted on behalf of the crown that the deceased was stabbed with the knife by the accused and the accused doesn't deny stabbing the deceased under the left part of her chest.

The medical evidence shows that these are the injuries which caused the deceased's death. I may just mention that facts are largely common cause.

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The accused, however chose to give an explanation which departs from the facts which are largely common cause. He said that he stabbed deceased because she and her companions were attacking him after he had stabbed P.W.3. However, P.W.3 who gave evidence before this court testified that she saw the accused kick the deceased and immediately stab the deceased also after the accused had stabbed P.W.3 herself.

P.W.2 testified further that after P.W.3 had been stabbed and had fallen as a consequence of that, P.W.2 went into the bar to look for help. When she came back P.W.2 saw the accused stab the deceased. She stressed that on no occasion did she and her companions throw stones at the accused.

The crown accordingly submitted that the allegation by the accused that these women were fighting him, is not only improbable but false beyond reasonable doubt. The crown submitted that he stabbed P.W.3 and proceeded to stab the deceased; and that at the time there was no attack on him by these women.

It was regarded as absolutely improbable that simple women beholding a man holding a knife would summon enough courage to attack him even if with stones at a distance. A further point that the crown attacked was the accused's attempt at asking the court to believe that he was hit with so many stones that he required medical attention. The crown found it incredible that, even after he had been so attacked the accused instead of going for medical attention should go and soundly go into bed at his place. The story advanced by the crown is based on the version given by P.W.5, namely that injuries that he accused wants the court to believe he received from the women, were in fact received from P.W.5. Thus the story that the accused received the injuries from the women, was only a red herring across the trail. The crown asked that the accused's story in this regard be rejected as too fanciful to be believed.

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The accused stated that when he came to this bar, he had been to the fields where he had used this knife for cutting sorghum. In the bar he found P.W.3. P.W.3 of course denies being lovers with the accused. The accused however said the previous day he had put up at his lover's place that is P.W.3's; further when he discovered after he had left around at 5.00 a.m. from his lover's place, as he came to a cafe, that he was missing a sum of no less than M100. He made this discovery when he was trying to buy tobacco and beer at that crack of dawn. However, trusting that his lover would not disoblige him in any way in case the money had dropped in the house, he let this be until the time when he came to ask her about it at the bar in the afternoon. When he came to the bar he says he called her outside the bar and asked her about the money. P.W.3 denied having taken that money, but because the accused got so annoyed when she behaved this way, he stabbed her and consequently P.W.3 produced the money from around her breast-area and the money was intact. There was still the whole M100 as it was undisturbed. This story is riddled with surprises. If 'Manthabiseng had gone to the bar with this M100, one would have expected that part of it would have been used in the bar; and if 'Manthabiseng, as the crown witnesses state, was going away, there was no question whatsoever that she was going to use that money in the bar where the accused said she was. This story is again surprising in the sense that the accused didn't take 'Manthabiseng to either a chief or anybody in authority concerning her unlawful taking of his money.

Another aspect of the accused's story which is most surprising is that 'Manthabiseng even though she had received this wound in the area which has been indicated by this witness herself in the witness's box, managed to go back into the bar.

I have no hesitation in rejecting the accused's story in this regard. The only probable story in the circumstances is that given by the crown witnesses who testified

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including the victim herself that after she got stabbed she fell immediately to the ground and only came to when she was in the kind neighbour's house.

P.W.2 who witnessed the stabbing says that had P.W.3 given anything to the accused after the accused had stabbed her, she would have seen it. Needless to say P.W.3 also denies having ever given the accused anything.

The accused pretends that he acted in self-defence; but this hardly can pass muster because he was not in danger. Credible evidence shows that there was no attack on him, nor was there any stone throwing. All these that he says he perceived can best be regarded as nothing else but a product of his fertile imagination.

The story which seems satisfactory is that advanced by P.W.5 that he is the one who caused whatever wounds the accused received, in response to the accused's resistance to the chief's summons during which action the accused stabbed P.W.5 on the side of his face. Indeed proceedings regarding P.W.5's injuries or assault by the accused and P.W.3's injuries or assault by the accused and P.W.3's assaults by the accused took place in the Subordinate Court. The accused says that without pleading or even being given a charge he found himself sentenced to whatever term he received. That is another manifestation of his fertile form of magination; moreso because he didn't even appeal when such an irregular treatment was purveyed to him.

It was argued on behalf of the accused that his behaviour couldn't just have occured, out of the blue, so to speak, and that the court should infer that something must have happened to warrant this albeit stupid and unjustifiable act. Indeed there is nothing that obliges the accused even to say anything, because the onus of proving his guilt in a case is on the crown. But if he makes an assertion then he must be able to stand by it, and show its probabilities where he can. But in this

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regard he has failed hopelessly to do so. But that is not enough, the court is to satisfy itself that, what he said is not only improbable but false beyond reasonable doubt. It is fitting therefore to refer to portions of the evidence which show that although incriminating statements were given against him in this court by the crown witnesses in the presence of the accused he nonetheless didn't gainsay them and instead let them be passed over in silence.

The accused himself gave an account of how his so-called self defence came about. In his evidence in chief he told me that he believes that he stabbed the deceased once, but was later told that he inflicted two wounds on her. He says he accepts that he might have done so. Yet it is strange that when he was under cross examination he gave an account of how he inflicted the first wound, and how shortly thereafter he inflicted the second one. So this account that he gave tends to give a lie to his former assertion that he believed he stabbed the deceased once. He knew even at the time that he was inflicting these injuries the number of times that he had done so. Therefore he was making a pretence in this court under his evidence in chief when he said that he didn't know, whereas in the same proceedings under cross examination which took hardly ten minutes after his evidence in chief, he remembered suddenly and gave full account of how the wounds were inflicted. Now coming to the question of the significance of a false story that an accused person gives. I would refer to Broadhurst vs Rex 1964 A.C. 441 at 457 that:-

> "Save in one respect an accused who gives false evidence is in the same position as one who gives none at all and that in a case where the jury can make two inferences, the fact, that the accused has given false evidence serves as a factor in strengthening an inference of guilt."

In keeping with this authority is Rex vs Moroka Mapefane (unreported) CRI/T/80/71 where Jacobs C.J., as he then was, said:-

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> "But an accused giving evidence from the shadow of the gallows, so to speak should not and cannot be convicted merely because he is a liar. His lies might in certain circumstances sufficiently swing the balance against him."

I can hardly think of any reason why such circumstances can be said not to be reflected in the case of the instant accused.

In this case prior to the assault on the deceased, the accused had been seen assaulting P.W.3 and he made use of the exhibit before court, the knife that is before me here.

I wish to borrow the words of William J.A. in S vs Mini 1963 (3) S.A. 188 at 192 where the position is summed-up neatly as follows:

> "A person in law intends to kill if he deliberately does an act which he in fact appreciates might result in the death of another and he acts recklessly as to whether such death results or not."

In another portion of the same case Holmes J.A. said at 140

> "If a person foresees the posibility of death resulting from his deed and nevertheless does it reckless whether death results, or not, he has in law the intention to cause death. It is not necessary that he should have a desire to cause death."

And in Rex vs Dully 1923 A.D. 176 at 186 the authority goes as follows:

> "The intention of an accused person is to be ascertained from his acts and conduct. If a man without legal excuse uses a deadly weapon on another resulting in his death the inference is that he intended to kill the deceased."

Expressed in Rex vs Buthelezi 1925 A.D. 169 at 194 is that :-

> "The knife went through the chest-wall, any person pushing a knife through the chest-wall must have had the intention of causing serious injury to the person receiving the wound."

I found that the crown has discharged its onus. The accused is accordingly found guilty as charged.

With regard to extenuating circumnstances. I think it is important to know what extenuating circumstances are. The defination is to be found in Rex vs Letsolo 1973 S.A. 476 A By Holmes J.A. Where the learned judge said:-

> "Extenuating circumstances have more than once been defined by this court as any facts bearing on the commission of the crime which reduce the blameworthiness of the accused as distinct from his legal culpability. In this regard a trial court has to consider
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> (a) whether there are any facts which might be relevant to extenuation, such as immaturity, intoxication or provocation, of course the least is not exhaustive.
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> (b) whether such facts in their accumulative effect, probably have a bearing on the accused's state of mind in doing what he did.
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> (c) whether such bearing was sufficiently appreciable to abate the moral blameworthiness of the accused doing what he did. It stands to reason therefore that in deciding (c) the trial court exercises a moral judgement. It would suffice therefore that, even though an accused person may be said to have taken liqour that in itself does not entitle him to the benefit that otherwise the existence of the extenuating circumstances can endow him unless the intoxication had a bearing sufficiently appreciable to reduce his moral blameworthiness."

I agree however that what your counsel said has a bearing in this case. You may count yourself lucky that my assessors and I agree that there are extenuating circumstances on account of the liqour you had consumed.

You are sentenced to 19 years' imprisonment.

J U D G E.

12th December, 1989.

For Crown : Mr. Sakoane

For Defence : Mr. Moorosi.