

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

BELEME PAKISI

Held at Quthing

J U D G M E N T

Delivered by the Hon. Mr. Justice M.L. Lehohla
on the 10th day of March, 1989.

Accused is charged with the murder of Thebane Pakisi allegedly committed intentionally and unlawfully on 20th April 1987 at Ma Chabane in the district of Qacha's Nek. Accused pleaded not guilty to the charge.

All the depositions at the preparatory examination in the court below were admitted. The admissions were accepted by the Crown.

P.W.1 deceased's wife Maboemo Pakisi, P.W.2 deceased's brother who is also accused's brother Elia Pakisi and their close relative P.W.3 Moletsane Makhooane formerly Moletsane Pakisi were however cross examined with a view to laying a foundation for a series of misunderstandings, quarrels and bad blood that existed not only between them and accused but between accused and deceased and also between deceased and the father to all these three brothers as forming the background to the tragedy that befell the deceased. The purpose of this endeavour by the defence is not to pre-empt the Court's verdict in any way but to lay a foundation for factors to be taken into account should an adverse verdict

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be returned by the Court at the end of the day. Otherwise as it is wont to do the crown must discharge its onus beyond a reasonable doubt.

As the facts are admitted a brief summary thereof will suffice.

On the day in question accused went to deceased's place. He had a blanket on under which he had shielded a sword about 2½ to 3 feet long. Its blade is sharp. Its handle is about 6 inches long. The sword was handed in marked exhibit "1".

Accused entered deceased's house, greeted the occupants consisting of members of deceased's household i.e. P.W.1 P.W.2 deceased and young children. Accused's greeting was responded to cordially.

Accused was bare-footed. He moved next to deceased who was sitting and relaxing on a chair while his wife was preparing the evening meal for her children.

Accused without warning thrust his sword into deceased's chest. It went through the heart and protruded at the back of deceased. P.W.1 who had only heard the sound accompanying the thrust of the sword through deceased's muscles on seeing what had happened screamed. P.W.2 tried to rescue deceased, but it was too late.

P.W.2 and another managed to disarm accused. Deceased walked a few paces outside but fell and died.

P.W.4 Mamorena Mohapi and other villagers raced to the scene following the alarm raised by P.W.1. They helped carry deceased into the house.

Then accused came back and said that he had only come to see that deceased was dead for if he wasn't he wanted to finish him off.

He left saying he was going to report himself at the Police Station. However as he went via P.W.3 he informed

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the latter that he had killed deceased. Asked why, he said he had no reason. P.W.3 persuaded accused to put up at his place for the night. Then villagers came and arrested him and handed him over to the police.

The post mortem report shows that death was due to cardiac temponade (a thrust through the heart) caused by a stab wound.

The Crown submitted that accused did this fully knowing what would ensue and that he desired just that end.

Accused in a sworn statement that he made from the witness box elaborated on a feud that existed between him and deceased spanning a period of no less than four years and culminating in his emotional stress that he suffered when his own wife who was in his company was called by deceased and the wife obliged leaving accused smarting under this act of contempt towards him.

The story he put through his counsel to the Crown witnesses and it was denied save that none of them including his father has bothered to come and see him in jail since his arrest to date - is that he and deceased were engaged in dagga selling enterprise wherein he was cheated by deceased of a good part of his own share with the result that out of M600 he only got M196. He said deceased's wife knew of this episode. Further that his radio was burnt by deceased who also captured his donkeys forcefully and sold them. He also referred to unacceptable behaviour by deceased who roped his horses among his crops in his field.

He referred to occasions when deceased was threatening to shoot him with a gun. Also when he threatened to stab him with a knife at least twice at Thekong and twice in Lesotho. He referred to deceased's hostile and violent attitude to their father and lastly pleaded that he slightly remembers events of the fateful day because then he was confused and was in a kind of a trance from which he recovered when he was in the cell already under

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arrest.

As for the history of the long feud he refers to, I am not persuaded that it could have any bearing on the case because it consists of grievances of the past which could not account for the sudden attack on the deceased while relaxing in the peaceful atmosphere of his home. The suddenness of the attack stood in stark contrast with accused's peaceful greeting to deceased and members of his household, and equally the fact that the weapon he was carrying was never noticed until it had been used on deceased.

As for the allegation that accused's actions were not subject to his mental control, I once more find it a farfetched proposition because the admitted evidence negates it. His acts showed the operation of a calculating and cunning mind, both before and after the deed. He is said to have said that he killed deceased not accidentally but intentionally both because deceased's actions had caused his own wife to desert him and because when deceased is out of the way he would be able to live with P.W.1 as his wife.

Furthermore there is no history of accused's having had similar or even remotely similar bouts of automatism either before or after the event. The onus was on him to prove its existence on a balance of probabilities because he has asserted it.

In determining whether there was mens rea accompanying accused's acts it is enough that the part of the body stabbed was deceased's upper body and the weapon is the blood curdling forged peace of metal with a sharp blade before me, further that accused had this grudge against the deceased which he laid bare to those who had come to the scene immediately after the stabbing.

The explanations offered by accused cannot justify the taking away of a human life in the circumstances revealed in the trial.

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I need not refer to any authorities because it is a well known principle of law that he errs who cites any authorities to prove obvious truth. Put in another way "perspicua vera non sunt probanda". As the intention revealed in this case is direct intent as opposed to legal intent I accordingly find accused guilty of murder as charged.

My assessors agree.

J U D G E.

10th March, 1989.

ON EXTENUATION

Submissions :

In the course of the trial the accused on his evidence under oath has established existence of extenuating circumstances.

In the judgment just read the Court has stated these events narrated by accused cannot legally afford him a defence. But morally they do.

He alleges the deed was actuated by these events.

Test for extenuation is subjective. What was going on in his mind is what is important.

Court : I agree with the submissions and do find extenuating circumstances to exist in this case.

Sentence : Sentenced to twelve years' Imprisonment.

My assessors agree.

J U D G E.

10th March, 1989.

For Crown : Mr. Sakoane

For Defence : Mr. Mda.