

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

V

ALBERT SEKOATI

Held at Butha-Buthe

J U D G M E N T

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

In an indictment wherein the accused was jointly charged with one Teboho Sekolokoto, for the murders of Tokonye Mohlahli and Mamookho Monyako, accused pleaded not guilty. His co-accused tendered a plea of guilty to Culpable Homicide which was accepted by the Crown; hence separation of trials of the respective accused.

In the proceedings that ensued the defence admitted the depositions of the following witnesses at the preparatory examination :

P.W.2 Dr Seape  
P.W.3 Setompi Ramotsekoane  
P.W.4 Eric Mahlatsi  
P.W.5 Maiketso Mohlahli  
P.W.7 Dr E.T. Vos and later after he had been sworn P.W.6 No. 1556 Warrant Officer Lethunya.

The depositions of P.W.2 showed that he examined P.W.1 on 7th January at the Butha-Buthe hospital. The patient had a laceration on the head and along the back.

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The wounds were caused by either a blunt or a sharp object.

P.W.1 Puseletso Chabeli gave oral evidence before this Court and pointed out an old scar of a wound which he testified he sustained during the occasion which gave birth to the instant proceedings.

P.W.3's admitted evidence shows that while staying in Butha-Buthe in January 1985 she was in love with one of the deceased Tokonye Mohlahli. She also knew the deceased 'Mamookho or 'Mabatho who was in love with P.W.1.

It appears that there were four people in all in P.W.1's house. These were P.W.1 himself, then P.W.3 and the two deceased. The four were sleeping in pairs, that is, P.W.1 with deceased 'Mamookho and P.W.3 with the deceased Tokonye.

Then according to P.W.3's evidence during the course of the night accused came to the house where the four were sleeping and told the deceased 'Mabatho that he wanted his overcoat.

'Mabatho told accused that owing to the fact that things were scattered about in that house and that the house was small and further that there were visitors in there, accused should come and collect it in the morning.

Then accused went away only to come back later on in the company of Teboho who kicked the door and inquired why 'Mamookho did not hand over the overcoat. 'Mamookho said it would be handed over in the morning and Teboho was not satisfied with that answer apparently hence he asked why in the morning. Then P.W.1 stated "because there were visitors" in there.

Thereupon Teboho asked whether the house was used for sexual intercourse. Thereupon Teboho told P.W.1

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that he was used to calling him a thief and started assaulting P.W.1 with open hands. P.W.1 threw Teboho outside and with the assistance of 'Mabatho they closed the door.

P.W.3's evidence shows that P.W.1 and deceased Tokonye then put on their trousers and that there was a light in the house then.

Then accused said the occupants of the house should open as he and his companion did not want to fight.

But this in my view was a mere ruse or stratagem because of what followed.

'Mabatho opened the door. Accused entered and rushed at P.W.1 and put off the flame. Thereupon Teboho insulted the company who were in the house and started stabbing P.W.3 with a knife on the arm and proceeded to stab 'Mabatho too.

P.W.3 escaped from the fracas and on her way back later she found that Tokonye was lying dead in a ditch and had bled from a stab wound described by P.W.7 Dr Vos as sited on the upper side of the chest measuring 3 cm in length. The wound according to P.W.7 continued from the cavity of the chest into the heart.

Dr Vos's evidence as to the female deceased's injuries is that she had 3 stab wounds on the chest. They perforated the lung on the right and led to extensive bleeding into the chest.

The cause of death in respect of Tokonye was a stab-wound on the left upper chest. In respect of 'Mamookho it was stab wound on upper chest causing haematothorax. The admitted evidence of P.W.4 Eric Mahlatsi showed that on the night in question he had been on his way from Pholosa night club when he heard some cries seemingly of a man and a woman from a house nearby. P.W.4 stopped to find out about these cries whereupon he saw accused and Teboho coming from the

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house where the cries emanated. He called accused by name and asked why he and his companion were running away from people who were crying but was vouchsafed no answer. Instead they carried on running.

P.W.4 saw P.W.1 running and heading for the house of Pholosa. P.W.3 also came out running followed by a man who fell into the ditch. P.W.4 did not know this man but found that he was dead when he came to him.

Police collected the woman who appeared dead and later the man who was dead.

P.W.6's admitted evidence is that on 6-1-85 he met accused and his companion. They were handed over to him by Sgt. Sehlatsana. P.W.6 took accused and his companion to the Charge Office where he cautioned them. They then made their statements when questioned about the deaths. P.W.6 asked them to hand over their knives regarding which they made some explanations where upon he charged them with the two murders.

P.W.1 whose evidence was led told the court that on 5-1-85 while asleep with his girl friend 'Mamookho and the two visitors Setompe and deceased Tokonye the accused arrived and knocked at the door whereupon he woke 'Mamookho up and told her that accused was knocking at the door for he identified him by the voice when he said "basie basie koko" (koko is conventional way of saying open).

P.W.1 does not know what "basie basie" meant.

'Mamookho then replied when accused said he wanted an over-coat. She said "Albert the way things are put all over the show in here and the house is small and the fact that we have visitors you had better come for the coat tomorrow morning."

Accused went away.

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After ten minutes he was back again but this time in the company of Teboho. The coat was handed over to accused by 'Mamookho.

Then Teboho asked if that is a sexual intercourse house.

P.W.1 replied and told Teboho that those were not the words he could use for the house was not his.

P.W.1 closed the door and dressed up putting on a pair of trousers only.

When he tried to let the latch catch by pushing it up he felt that the door could not swing to, and that it seemed that it was being pushed from outside.

P.W.1 pushed the door harder but could not equal the countervailing force whereupon 'Mabatho came to his assistance; but even then the door swung open. There and then accused stabbed P.W.1 with a knife on the forehead. The court was shown the scar as indicated by this witness.

Then P.W.1 grappled with accused and held fast the accused's knife hand. This continued until someone shouting from outside asked what was happening. Whereupon accused disengaged himself and escaped into the night.

P.W.1 was cross-examined and weaknesses pointed out in his testimony; namely that he pretended he did not know that Tokonye was in love with Setompe, further that whereas at the preparatory examination he said accused wanted his overcoat because he was journeying the following morning in this court he said he demanded it because he was feeling cold. I find that these discrepancies do not affect the case in the material respects.

Much was made of the fact that when coming to look for the coat on both occasions accused was calm. But

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as I indicated above his calmness was a sheer ploy that was used to hide his actual intention; shown by the fact that his role in this episode was to keep P.W.1 in a manner that he could not help those whom Teboho was stabbing with a knife. Once given his coat accused had neither lot nor part in P.W.1's house.

A suggestion was made in the cross-examination of P.W.1 that accused only came back in the company of Teboho because P.W.1 had said to accused that accused's overcoat was with Teboho. But admitted evidence does not bear out the purport of this suggestion. Because this suggestion is not borne out by the evidence, an inference follows that Teboho was brought along by the accused for purposes of carrying out the unprovoked attack on the occupants of P.W.1's house.

I have in the earlier ruling dealt with further matters which indicate that an inference that common purpose was the central part of this attack is not unfounded. I need not repeat them here.

I can only add that the fact that accused's overcoat remained in P.W.1's house shows that accused is no stranger in that household. P.W.1 testified and showed that accused left the over coat when he had last come for beer-drinking some three days before.

Evidence also shows that P.W.3 was not only in love with the deceased Tokonye with whom he was sleeping but was also in love with Teboho. Accused observed that P.W.3 was sleeping with Tokonye before setting out to call Teboho to the house who started swearing and; no doubt gripped by pangs of jealousy; accused the occupants of using the house of P.W.1 as the place for sexual intercourse.

Deceased 'Mamookho lived with P.W.1 virtually as man and wife. Accused worked with P.W.1. Hence when accused told those inside that he and Teboho despite his insults had not come to fight the fears of P.W.1 and 'Mamookho were allayed. Clearly accused used his

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familiarity with owners of the house to Teboho's advantage. Both he and Teboho exploited this advantage.

The fact that when the door was opened accused and Teboho attacked the occupants of the house must have taken those occupants by complete surprise. The manner in which accused and Teboho carried out each his task so effectively shows that there was not only a prior plan but that there was also common purpose.

I have however looked at Snyman's Criminal Law where the learned writer criticises the doctrine of common purpose : At 212 he says

"This doctrine is unacceptable, being irreconcilable with the general principles of our Criminal law, and unnecessary, because the liability of different persons can be determined by applying the accepted general principles ....."

" A further very fundamental objection to the doctrine is that, because the common purpose was emphasised, the requirement of causation in murder was either disregarded or considerably watered down. It was sometimes overlooked that even a person who had the same intention as the murderer became a co-perpetrator only if, apart from his intention, his individual conduct amounted to an act or acts which (possibly together with other factors) caused the death."

With respect, I fail to understand the learned writer's criticisms which at the barest level seem to ignore the importance of division of labour and speciality of function. The doctrine of common purpose entails all the manifestations of division of labour save that in criminal acts such division is put to achieving unlawful ends - An abuse in itself of the division of labour.

Accused has elected to exercise his right to remain silent.

As properly submitted by counsel for the crown that

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accused's silence may be a factor taken into account in determining if guilt has been proved beyond reasonable doubt I agree with this submission.

Indeed the onus remains on the crown throughout to prove the case beyond a reasonable doubt. Accused's silence does not relieve the crown of this onus.

It was thus submitted that P.W.4 indirectly implicates the accused in that he saw him running away from the place where there were cries which turned out to be at the place where a man was found dead and an injured woman was also found who later died.

I accept P.W.1's evidence that accused had stabbed him with a knife, therefore the argument cannot stand that he was playing a passive role in the attack or even that he was trying to separate Teboho from P.W.1 as this is not borne out anywhere in the record.

Evidence which is satisfactory shows that before the light went out accused stabbed P.W.1 with a knife.

Direct testimony implicating accused in the commission of the crime has been established.

I cannot accept the view expressed that accused was playing any pacifying role at all because R vs Ndlhovu 1945 A.D. at 386 amply disapproves of speculation

"on possible existence of matters upon which there is no evidence, or the existence of which cannot reasonably be inferred from the evidence."

Moreover the submission that accused when he pinned down P.W.1 and thus rendered him motionless while others were being stabbed by Teboho, was to ensure that he didn't fight with Teboho, is baseless because nothing in the evidence shows that P.W.1 was armed at all. This submission would have had substance if accused was said to have restrained Teboho from his murderous acts against the occupants of P.W.1's house. With

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regard to an accused person who chooses not to testify. Holmes J.A. in S vs Madlala 1969(2) SA. 637 says:

"An accused person who elects not to give evidence runs a risk and the fact that his failure to give evidence might be due, not to his complicity in the offence charged, but to his complicity in a subsequent or lesser offence, will not enure to his benefit."

I agree with this authority entirely.

I agree also with the authority in R vs. Mlambo 1957(4) SA. 728 at 737 that

"If an assault ..... is committed upon a person which causes death .... a very short time thereafter and no explanation is given of the nature of the assault by the person within whose knowledge it..... lies, a Court will be justified in drawing an inference that it was of such aggravated nature that the assailant knew that ..... death might result."

For purposes of proving the case against the accused it would never do to say he remained silent because his role was minor.

As indicated in the evidence given accused was a cunning actor in this crime for, but for his assurance to 'Mamookho that he and his companion were not coming to fight deceased would not have opened the door.

Why would accused, if he had no common purpose with Teboho, help push the door which, it seems, P.W.1 and 'Mamookho could hold against the initial force exerted against it by Teboho?

Why would he after then obtaining his overcoat comport himself in the manner he did, - heading for P.W.1 and stabbing him with a knife if he did not associate himself with the acts of his companion? Having been given his coat accused had no business to remain in P.W.1's premises, let alone attack him with a knife.

I find that the crime of murder has been proved

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against the accused and accordingly convict him as charged.

Sentenced to 10 years' imprisonment.

J U D G E.

12th May, 1989.

For Crown : Mr. Mokhobo

For Defence : Mr. Mphalane.