

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

v

LETSIELO FOROMANE

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 26th day of June, 1989.

The accused has pleaded not guilty to a charge of murder on the following allegations:

"upon or about the 21st day of November, 1987 and at or near Manamaneng in the district of Thaba-Tseka, the said accused did unlawfully and intentionally kill Phafomane Tlaka."

It is significant to mention that at the commencement of this trial Mr. Moorosi, who represents the accused, informed the court that the defence admitted all the depositions made at the Preparatory Examination proceedings. Mr. Sakoane, counsel for the crown, accepted the admissions made by the defence counsel. In terms of the provisions of S. 273 of the Criminal Procedure and Evidence Act, 1981 their depositions became evidence and it was, therefore unnecessary to call all the deponents as witnesses in this trial. By the consent of both counsels the post-mortem examination report was handed in from the bar as exhibit "A".

2/ In as far

In as far as it is relevant the evidence of D/Tpr Nteta was that on 23rd November, 1987 he received a certain report following which he proceeded to Linakeng clinic where he found the dead body of the deceased, Phafomane Tlaka. On examining the body for injuries the police officer found a single stab wound on the left side of the chest. The accused person was handed over to him and after he had given him an explanation the police officer cautioned and arrested him. He later charged him as aforementioned.

The body of the deceased was transported to the mortuary at Mokhotlong hospital. It sustained no additional injuries whilst it was being conveyed from the clinic to the mortuary.

According to the post-mortem examination report (Exh "A") Sam Tlaka identified the body of the deceased before the medical officer who performed the autopsy at the mortuary of Mokhotlong hospital on 24th November, 1987. The examination revealed a single stab wound on the left side of the chest. The wound had penetrated through the left upper lobe of the lungs and the cardiac sac. On these findings the medical officer formed the opinion that an instrument such as a knife could have been used to inflict the injury on the deceased and death was due to the stab wound into the cardiac sac.

I can think of no good reasons why the opinion of the medical officer that the deceased died as a result of the stab wound into the cardiac sac should be doubted in the circumstances of this case. The salient question is, however whether or not the accused is the person who stabbed the deceased and, therefore, brought about his death.

The evidence of Olae Tlaka and Nokaene Foromane was that on the evening of the day in question they were with the deceased's wife, Nothishene Tlaka, and the deceased himself in the latter's house when they heard dogs barking and someone beating them up outside the house. The deceased went out of the house to check what was happening. Shortly thereafter he (deceased) returned into the house followed by the accused who appeared to be under the influence of intoxication.

Inside the house the accused took a seat on a place commonly known as "mohaaloana". Then the deceased who was seated on a stool next to the door asked him why he was beating up his dogs. After the accused had explained that the dogs were biting him the deceased told him to leave the house as he was tired and wanted to sleep.

The accused then stood up, went to the deceased, who was still seated on his stool next to the door, and stabbed him with a knife on the chest before walking out of the house. According to his evidence Olae Tlaka tried to assist the deceased to his bedding which has already been prepared for him on the floor but the latter collapsed and died.

The evidence of Olae and Nokaene is in all material respect corroborated by that of the deceased's wife, Nothishene Tlaka, who testified that when she saw her husband falling down as a result of the stab inflicted upon him by the accused she screamed out of the house and fainted. The next thing she found herself back in her house which was crowded with many people. Her husband was lying dead on his bedding.

Sidwell Mododa testified that on the evening in question he was already in bed in his house when he heard dogs barking. Shortly thereafter he heard women screaming from the direction of the deceased's house. He got up and rushed to the scene. On arrival Sidwell found the deceased lying dead in his house. He had a gaping wound above the left breast. On the following day the accused was arrested in connection with the death of the deceased.

In his evidence Mpanana Mokoqa testified that one morning he learned of the death of the deceased. Shortly thereafter he noticed the accused passing next to his house. He called the accused into the house and asked him where he was going to. In reply the accused explained that he had been sent to collect some wheat from the home of one Mochokoloane. He asked the accused how he could be sent on an errand when he (witness) had learned that he (accused) had killed a person. When the witness suggested to take him to the place where it was alleged he had killed a person, the accused went out of the house and ran away.

Mpanana then ordered Mohlakotha Mokoqa and Johannes Mokoqa, who has since passed away, to get on horses and chase after the accused. This is confirmed by Mohlakotha who testified that he and the late Johannes rode after, and caught hold of the accused. They took him back to Mpanana's place from where he was escorted to the house of the deceased who was the chief/headman in the village. According to the evidence of Sidwell, Mpanana and Mohlakotha on arrival at the chief's place the accused handed over

5/ his stick

and a brown okapi knife.

It may be mentioned that in his evidence Tpr Nteta testified that at the time the accused was handed to him at the clinic the stick and the okapi knife were also handed over to him. He took possession of and later handed them in as exhibits and part of his evidence at the preparatory examination proceedings.

In his defence, the accused gave evidence on oath and told the court that at about 9 a.m. on the day in question which was a saturday he, the deceased who was in fact his relative, and many other people started drinking beer at the home of a certain woman in a neighbouring village. They were a group of 20 people and shared altogether about 10 or so large scales of beer. According to him, at about 5 p.m. on that day, the accused returned home only to find his wife and mother not in. He decided to go and search for them.in the village.

In the course of the search the accused came to the home of one Mokoebi where he found only the wives of his two elder brothers, still drinking beer. When he asked then why they were there at that late hour of the day his sisters-in-law argued that he was pestering them. He got a twig with which he whipped the two women who then ran away.

The accused returned home and found only his mother in. His wife was still not in. One of his elder brothers fought him for having whipped his wife. Thereafter he decided to go and report the absence of his wife to the deceased who, as it has already been stated was the chief in the village and a relative of his.

6/ He conceded

He conceded that as he approached the deceased's homestead dogs barked at him and he had to beat them away. Inside the house he found the deceased seated on a stool next to the door. The deceased was in the company of his wife Nothishene Tlaka, his brother Olae Tlaka and Nokaene Foromane, one of the two women he (accused) had whipped at the home of Mokoebi. He further conceded that to the deceased's question as to why he had been beating up his dogs he replied that he was merely chasing away the dogs which were biting him.

According to him, the accused then reported the disappearance of his wife to the deceased who, however dismissed him as having brought frivolous matters before him. In the observation of the accused the deceased did not welcome him at his house because he had beaten up the dogs and whipped his sisters - in-law one of whom was Nokaene Foromane who had apparently come to report the matter at the chief's place.

Accused testified that he was offended by the attitude of the deceased and so he stabbed him on the chest with the Okapi knife as he was going out of the house. However, in reply to the questions that were put to him by the court he claimed that the deceased had attacked and hit him a blow on the head with a stick. He had therefore stabbed him in self-defence. As a result of the attack on him by the deceased he sustained an open wound which he could not, however, take to a medical doctor for treatment because he had no money. On arrival at the Mokhotlong police station and the prison he reported his injury but both the police and the prison authorities did nothing to afford him medical treatment.

7/ It will be

It will be remembered that according to the crown witnesses' depositions, which were admitted by the accused, at the time the accused stabbed the deceased, the latter was just sitting on his stool and not in any way attacking him. It was contended in argument that once they had been accepted by the crown, the accused's admissions formed part of evidence and became binding on the accused person who could not be allowed to resile from them.

I am unable to agree with this contention which is dangerously too wide in its implications. The depositions admitted by an accused person may include statements which are contradictory of one another. As it was pointed out by the Court of Appeal in Bernard Sepanya vs Rex - C. of A. (CRI) No. 3 of 1977 (unreported) at p.6:

"It is, of course, quite clear that statements which are contradictory of one another cannot both be truein the circumstances. The appellant's counsel..... intended to admit the truth of all the evidence other than any statements-made thereat which were contradictory to one another."

True enough, in the present case there is no question of contradictory statements in the depositions initially admitted by the accused. What happened is that after he had admitted all the depositions made at the Preparatory Examination proceedings, the accused went into the witness box and testified on oath that at the time he stabbed the deceased, the latter was attacking him with a stick. He was, so to speak, withdrawing that portion of the admissions which stated that at the time he stabbed the deceased the latter was sitting in his stool and not in any way attacking him.

As Hoffman pointed out at page 304 of his work South African Law of Evidence (2nd Ed)

" There is no authority dealing with the circumstances in which formal admissions made in Criminal proceedings may be withdrawn. In principle there seems no reason why this should not be allowed at any time before verdict...."

It seems to me, therefore, where the accused, having admitted the depositions made at the Preparatory Examination, goes into the witness box and, so to speak, withdraws part of the admissions he has made by denying the correctness thereof he is, on principle, entitled to do so and the court cannot simply dismiss him on the ground that he initially admitted all the depositions made at the Preparatory Examination. The court has a duty to take the accused seriously and consider, in the context of the evidence as a whole, what he has said on oath so as to determine whether to believe the accused's story or that of the prosecution witnesses.

Now, it is important to observe that although the accused has testified that at the time he stabbed the deceased, the latter was attacking him with a stick, this is denied by Nothishene Tlaka, Olae Tlaka and Nokhaene Foromane all of whom were admittedly present in the house at the material time. According to Nothishene, Olae and Nokhaene the deceased was just seated on his stool at the time the accused stabbed him with a knife.

9/ Moreover

Moreover, if the accused's story that he stabbed the deceased at the time the latter was attacking him with a stick were the truth, he would no doubt have mentioned it in his evidence in chief. He did not. I have no hesitation in rejecting as false his story in this regard. Likewise I reject as untrue the accused's allegations that the deceased had inflicted on his head an open wound for which the police and the prison authorities refused to refer him for medical treatment. It is by now a well established practice of the police and the prison authorities to refer for medical treatment all victims of assaults who come in their custody with injuries. I see no reason why they would have treated the accused differently if, in deed, he had sustained an open wound on his head at the time he came to the police and the prison authorities.

In my view the evidence is simply overwhelming against the accused and the truth of the matter is that he stabbed the deceased who was merely sitting on his stool and not in any way placing his life in danger. Contrary to what he wishes this court to believe the accused sustained no injuries at all. That being so, self-defence cannot avail him and the question earlier posed viz. whether or not the accused is the person who stabbed the deceased and brought about his death must, therefore, be answered in the affirmative.

Bearing in mind that he used a lethal weapon such as a knife to stab the deceased on the chest which is a vulnerable part of a human body I am convinced that the accused was aware that death was likely to result. He nonetheless acted reckless whether or not death did occur. Consequently it must be accepted

9/ that in

that in assaulting the deceased as he did the accused had the requisite subjective intention to kill, at least in the legal sense.

In the result, I come to the conclusion that the accused has committed the offence against which he stands charged and accordingly find him guilty of murder as charged.

Both my assessors agree with this finding.

B.K. MOLAI

JUDGE

26th June, 1989.

For Crown : Mr. Sakoane

Defendant : Mr. Moorosi.

EXTENUATING CIRCUMSTANCES.

Having convicted the accused of murder, the court is enjoined by S.296 of the Criminal Procedure and Evidence Act, 1981 to state the existence or otherwise of any factors tending to reduce the moral blameworthiness of his act.

In this regard there was evidence that before he stabbed the deceased to death the accused had spent the whole day at a beer house drinking intoxicating beverage. He must have been under the influence of intoxication. It is common knowledge that intoxication affects the mind of a person so that he does things he would not do when sober.

The court has also found on evidence that in assaulting the deceased, as he did, the accused had intention to kill only in the legal sense i.e. there was no evidence that he had pre-meditated the death of the deceased.

It is trite law that intoxication and the absence of premeditation of the deceased's death are factors to be properly taken into account in determining the existence or otherwise of factors that tend to reduce the moral blameworthiness of the accused's crime. Consequently I find that extenuating circumstances do exist in this case and a proper verdict is that the accused is guilty of murder with extenuating circumstances.

My assessrs agree.

Sentence : Nine (9) years imprisonment.

B.K. MOLAI