

CRI/A/22/88

IN THE HIGH COURT OF LESOTHO

In the Appeal of :

MPARA SEKHONYANA Appellant

v

R E X Respondent

J U D G M E N T

Delivered by the Hon. Mr. Justice B. K. Molai on
on the 16th day of August, 1989.

The appellant appeared before the Subordinate Court of Quthing charged with the crime of culpable homicide, it being alleged that on or about 23rd July, 1986 and at or near Mount Moorosi in the district of Quthing he wrongfully and unlawfully assaulted Mahlomola Lerotholi by stabbing him with a knife and inflicting upon him injuries that brought about his death.

The appellant pleaded not guilty to the charge but was at the close of the trial found guilty of assault with intent to do grievous bodily harm. He was sentenced to pay a fine of M80.00 or serve a term of eight (8) months imprisonment in default of payment of the fine. The appeal is against only the conviction on the grounds that it could not be supported by the evidence and that the trial magistrate misdirected herself in holding, as she did, that in the circumstances of this case self-defence did not avail the appellant.

2/ It was common

It was common cause that on 28th July, 1986 and at Queen Elizabeth II hospital Dr. Monaphathi performed a post mortem examination on a dead body of an African male adult. The body was identified before the medical doctor as that of the deceased by Komedi Komedi. The findings of the medical doctor were that the deceased had sustained a laceration on the back and a deep stab wound on the chest. The stab wound had penetrated into the heart resulting in the death of the deceased.

I can think of no good reason why the unchallenged findings of the medical doctor that the deceased had sustained the injuries described in the post-mortem examination report and that death occurred as a result of the stab wound on the chest should be disturbed. That being so, the important question for the determination of the court was whether or not the accused was the person who had inflicted the injuries on the deceased and, therefore, negligently brought about his death.

In this regard the trial court heard the evidence of P.W.2, Setutla Elia, who testified that on the afternoon of the day in question she was selling apples at Mount Moorosi bus stop when she noticed the deceased, the accused and his wife 'Mabatho, in front of a butchery belong to accused's father. The accused was clearly in an angry mood and complaining that he did not like the deceased talking to his wife. The deceased, who was following him, was pleading with the accused for forgiveness and explaining that he had merely asked for help from the accused's wife.

Whilst the deceased was thus pleading with the accused for forgiveness P.W.2 saw the latter taking out a

3/ knife with

knife with which he stabbed the former on the back. The accused's wife intervened by separating the two men. The accused then left and went towards one Ts'ekelo who had parked his vehicle nearby.

After a while, the deceased followed the accused and asked him whether he was aware that he had injured him. The accused again took out a knife with which he delivered three blows on the deceased who managed to dodge two of the blows. However the third blow landed on the deceased's chest. Thereafter the accused left in the direction towards his house.

After he had been stabbed the deceased leaned against Ts'ekelo's vehicle and asked to be taken to a nearby clinic. Whilst he was thus negotiating for help the deceased collapsed and fell to the ground. He was taken on to the vehicle with which he was transported to the clinic.

The evidence of P.W.1, 'Mamotsofe Sekotlo, was that on the day in question, 23rd July, 1986, she was working at the butchery when she noticed the accused and the deceased. It appeared they had had a clash because the deceased was following the accused and pleading with him for forgiveness. When the deceased came close to the accused, still pleading for forgiveness, the latter rushed at the former. They were separated by accused's wife, 'Mabatho. However, P.W.1 heard the deceased crying out. " Do you stab me with a knife?" or words to that effect. As he uttered those words the deceased was holding his left shoulder whilst the accused was walking away in the direction towards his house. The deceased then followed the accused still complaining that the latter had stabbed him with a knife.

4/ P.W.3,

P.W.3, 'Matsietsi Mahlala, told the court that on 23rd July, 1986 she and P.W.2 were selling at the bus stop when she noticed that there was a commotion. She then saw the accused going away followed by his wife, 'Mabatho, and the deceased. Shortly thereafter 'Mabatho and the deceased took a direction towards a nearby supermarket whilst the accused followed a direction towards his house.

On the way the accused met Tsekelo Sekhonyana and another man. Whilst the accused was talking to Tsekelo and his companion P.W.3 noticed the deceased running towards them. On arrival the deceased started kicking and hitting the accused with fists. The accused took out a knife with which he stabbed the deceased. Thereafter, the accused left for his house whilst the deceased leaned against Tsekelo's vehicle next to which he collapsed and fell to the ground.

In his testimony P.W.5, Tsekelo Sekhonyana, told the court that he was a District Extension Officer in the Ministry of Agriculture. On the afternoon of 23rd July, 1986 he was returning from duty at a place called Mphaki when he stopped the vehicle, in which he was travelling, at Mount Moorosi, in order to buy some food from a cafe.

As he walked to the cafe P.W.5 noticed the accused and his wife walking at some distance away. He knew them well for they were his relatives. The accused was clearly angry and talking in a loud voice. When he approached them the wife went back and P.W.5 met only the accused who complained that the deceased who was a member of the army was pestering him. According to him, P.W.5 advised the deceased to ignore the matter and go to rest at his house.

5/ As he

As he parted with the accused P.W.5 heard some one shouting that the deceased was coming again and the accused should, therefore run away. P.W.5 then looked back and noticed the deceased running towards the accused. On arrival the deceased started kicking and hitting the accused with fists. With intention to intervene in the fight P.W.5 returned to the scene. On arrival he found that the accused had produced a knife with which he stabbed the deceased on the chest. The deceased then stopped assaulting the accused and went to lean against the bonnet of the vehicle next to which he collapsed and fell to the ground. The accused continued on his way home whilst P.W.5, with the assistance of some soldiers and many other people who had also come to the scene, carried the deceased on to the vehicle in which he was transported to a nearby clinic. From the clinic the deceased was conveyed to Outhing hospital where he was certified dead on arrival.

The evidence of P.W.4, Tper Ramakeoane, was that between 4.30 p.m. and 5 p.m. on 23rd July, 1986 he was at Mount Moorosi bus stop when he noticed the deceased, a member of the army, collapsing and falling down next to a vehicle against which he was leaning. A certain Koali and P.W.5 were next to the vehicle. He rushed to the scene and assisted in carrying the deceased on to the vehicle which transported him to the clinic. Koali was the driver of that vehicle. P.W.4 noticed that the deceased had sustained two wounds one of which was still bleeding above the left breast.

At the clinic, a nurse (who however, did not testify at the trial), placed a cotton wool on the deceased's bleeding wound and bandaged it. The deceased was then rushed to Outhing hospital where he was, however, certified dead on arrival.

6/ According

According to his evidence P.W.6, Tper Moliko, was still on duty at Mount Moorosi police post when, on 23rd July, 1986, the accused came and made a certain report. The accused also handed in a knife which had blood stains on its blade. Following the report made by the accused the police officer cautioned, arrested and charged him of assault with intent to do grievous bodily harm. He took possession of the knife which was handed in as exhibit "1" at the trial.

Later, on the same day, the police officer learned that the deceased had passed away. He informed the accused and accordingly charged him of murder. As it has already been indicated, the accused was summarily charged with culpable homicide before the Subordinate Court of Quthing. That was, presumably, on the directives of the Director of Public Prosecutions.

In his defence the accused who, incidentally, is an albino went into the witness box and testified on oath that at about 3.45 p.m. on 23rd July, 1986 he had just finished skinning a cow and was sitting outside his bottle store when the deceased, a member of the military force, came to him. On arrival the deceased mockingly told him that his father was moving from one hospital to another suffering. When the accused asked him not to ridicule him because of the misfortune of his family the deceased threatened to kick him. He was stopped from doing so by a certain James who, however, did not testify at the trial.

Shortly thereafter, the accused tried to help James to open the door of a building which had previously been used as a Post Office. Because of the confusion in which he was, the accused could not open the door. He returned to where he had been

7/ sitting and

sitting and asked James to find another person to help him. Accused's wife then came to the scene. Whilst the accused and his wife were talking to each other the deceased came and stood between them. When the accused drew his attention that the person he was talking to was his wife the deceased asked: "Does an albino have a wife?" He then rushed at and kicked the accused on the testicles. According to him when he was thus assaulted, the accused tried to move backward but the deceased hit him a blow with a fist between the eyes. In self-defence he took out a knife with which he stabbed the deceased on the back.

The accused denied, therefore, the story of both P.W.1 and P.W.2 that, at the time he stabbed him, the deceased was merely pleading with him for forgiveness. In the contention of the accused, P.W.1 and P.W.2 had been influenced to implicate him falsely in this case by his own mother, 'Mathesele, who following the death of his father, wanted him to cede to her his chieftainship rights. I shall return to his evidence in a moment.

In her reasons for judgment, the trial magistrate pointed out that although P.W.2 was not an entirely reliable witness her evidence, that at the time the accused rushed at, and stabbed, the deceased with a knife the latter was merely pleading with the former for forgiveness, was corroborated by that of P.W.1 whom she found to be a truthful witness. The trial magistrate, therefore, rejected as false the accused's allegation that at the time he stabbed him on the back the deceased was assaulting him and accepted as the truth the evidence of P.W.2 confirmed by P.W.1 that the deceased was, at the time, merely pleading with the accused for forgiveness.

It is to be borne in mind that all the witnesses appeared and testified before the trial magistrate. She is, therefore, a better judge as to who of the witnesses was truthful or not. In my view, there was nothing unreasonable in the trial magistrate finding, as she did, that in as much as it was corroborated by P.W.1 the evidence of P.W.2 was the truth and rejecting as false the accused's uncorroborated evidence.

Now, coming back to his evidence the accused went on to testify that having stabbed the deceased in the manner he had described he left for his house. He conceded that on the way home he met P.W.5 and explained what had happened between him and the deceased. P.W.5 had hardly advised him to ignore the matter and go home when he (accused) heard P.W.2 shouting that the deceased was coming and he should run away.

Before he could do anything the deceased caught up with, started kicking and boxing him. The deceased then put his hand into his bogart but he (accused) caught hold of the hand and pressed it in the bogart. It was then that he (accused) felt that there was a pistol in the deceased's bogart. He took out a knife with which he again stabbed the deceased on the chest in self-defence. Thereafter, the accused left and went to his house from where he proceeded to Mount Moorosi police post and surrendered himself together with the knife exhibit "1". He later learned that the deceased had passed away.

Considering the evidence as a whole it is clear that the accused did not dispute that he was the person who inflicted the injuries on the deceased. He, however, contended that he did so in self-defence.

It is worth mentioning at this stage that in their evidence P.W.1,2,3,4 and 5 testified that at the time they saw him fighting the accused, the deceased was wearing only a skipper and a bogart. They did not notice a pistol or any other weapon in his possession. Indeed, P.W.4 told the court that he was the one who undressed the body of the deceased at the mortuary. No pistol was found on him. P.W.1,2,3,4 and 5 denied, therefore, the accused's suggestion that in the course of his fight with the deceased the latter had a pistol in his possession.

Be that as it may, it is significant that the accused's evidence that at the time he stabbed him the fatal wound on the chest the deceased was violently kicking and boxing him, was corroborated by the evidence of P.W.2, P.W.3 and P.W.5 who were all in the vicinity. The trial magistrate accepted, and rightly so in my opinion, that the deceased was then the aggressor. There being no evidence that he had in his possession any other weapon with which he could repel the violent assault on him the accused was in the circumstances, entitled to defend himself by the use of the knife.

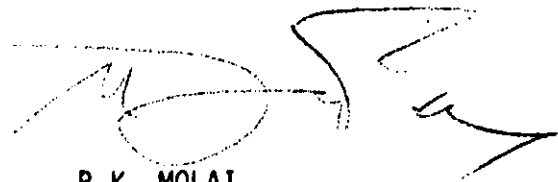
It is contended in argument that having found that self-defence availed him the trial magistrate should have acquitted and not found the accused guilty of assault with intent to do grievous bodily harm. I am unable to agree with this contention. The evidence in this case leaves me in no doubt that the assault which the accused perpetrated on the deceased was in two stages i.e. firstly outside the bottle store and secondly at the bus stop next to where P.W.5 had parked his vehicle.

Assuming the correctness of the trial magistrate's finding viz. that the deceased violently attacked the accused at the bus stop and the accused who had no other weapon with which to repel the unlawful attack stabbed him with the knife I have no quarrel with the conclusion that the accused acted in self-defence

However, it is significant to observe that as regards the first stage of assault outside the bottle store, the trial magistrate accepted, and rightly so in my opinion, the evidence that when the accused stabbed the deceased the latter was not in any way attacking him. The deceased was merely pleading with the accused for forgiveness. That being so, the accused could not be heard to say self-defence availed him.

Regard being had to the fact that the deceased died as a result of the second and not the first stage of assault it seems to me the trial magistrate correctly convicted the accused of assault with intent to do grievous bodily harm i.e. in respect of the first stage of assault.

In the premises, it is obvious that the view I take is that this appeal ought not to succeed and it is accordingly dismissed.



B.K. MOLAI

JUDGE

For Appellant : Mr. Nthethe,
For Crown : Mr. Thetsane.

16th August, 1989.