CRI/T/67/90

IN THE HIGH COURT OF LESOTHO

In the matter of :

R E X

v

THABO MOTHIBELI

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, 1990

The Crown has preferred a charge of Murder against the accused in respect of the alleged intentional and unlawful killing of Tahlo Marinakhoe. The deceased died on the 9th day of September 1988 at Ha Sekoati in the district of Qacha's Nek.

It appears that on the day in question there was at the scene a feast going on and many people had gathered there including the deceased. Later in the day or early the following day at around 1.00 o'clock the accused came to the scene. He was asked to sit down and was offered some beer. He was disturbed in his drinking by the deceased who kept on asking him to give him some beer; and the deceased went further to tell the accused to his face that this beer is not being sold but rather is beer prepared for the feast. It is clear from this that the deceased

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thought he was entitled to drink freely of the beer that had been offered to the accused on his arrival. While this was going on and shortly afterwards P.W.1 had occasion to hear the deceased complaining that the accused stabbed him. This occurred simultaneously with the act that P.W.1 demonstrated before this Court, namely, that pushing the knife through his blanket, the accused using his left hand stabbed the deceased who was close to him around the sternum or the solar-plexus. P.W.1 grabbed hold of the accused by his wrist on the left hand in the process, though he didn't see it, a knife dropped from the accused, the knife was later retrieved from under the table nearby. The deceased when asked what the matter was by the witnesses who were there told the witnesses in a question form "Don't you see that this man has already injured me?". The witnesses saw the place where the alleged stabbing had taken place. The accused was seperated from the deceased and the deceased was made to stand by the witnesses but the deceased complained that he was feeling tired and he was offered a seat but in no time he collapsed and died. One of the witnesses said that the deceased took about an hour to die; but regard being had to the nature of the wound and the place where it was inflicted, namely, on the left ventricle of the heart, the deceased could not have survived more than five minutes. And clearly the doctor's evidence shows that the ventricle was torn or lacerated some one and a half centimetres deep. It is therefore obvious that a man so mortally injured could never have survived for anything close to an hour; five minutes would be exceedingly long before he died.

The Crown witnesses were taxed in cross-examination as to their accuracy in the observation of events which were taking place there. To my view there doesn't appear to be anything that derogates from their clear observation of what was going on albeit at a feast where people might have been going up and down. P.W.1 stated that because of an intruder or a stranger who was there his view fell in the

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general direction of the accused because the intruder or a stranger had sat next to him. It is no wonder then that when a disturbance took place at the drop of a hat he was at the scene without any delay.

On the other hand the accused's story is totally lacking of local colour; in fact if one may put it, it appears as though it relates to a completely different scene from what was taking place in that place. It is as if the narrations that the Court heard in this trial occurred in two different places. The accused told the Court of the existence of a fight that took place in the house and yet none of the Crown witnesses who claimed to have been in that house were told about this fight that the accused witnessed and in the process of which he himself sustained an injury on the head. The accused among other things told me that he was, after the injury to the deceased, taken to a peach tree and tied to it naked. This is something that the Court heard for the first time when the accused was giving evidence in his defence. No doubt if his counsel had been told that story he would have put it to the Crown witnesses in view of the number of, I might say, quite irrelevant questions which he had put to the Crown witnesses. Surely this new version of the accused would have served as fruitful grist to the mill. On that score therefore the accused's story is rejected as false beyond reasonable doubt. I may just add that the Court having made this observation is aware that there is authority for the view that an accused person who gives false evidence is in no different position from the accused who says nothing at all but should his story lead to two inferences being drawn the fact that he lied will strengthen the inference of guilt flowing from the fact that he had something to hide.

I have been referred to a number of authorities which talk about the necessity for the Crown to prove its case beyond reasonable doubt. I have respect for those authorities but there is another authority which I have greater respect

for, namely, that proof beyond doubt doesn't mean proof beyond a shadow of doubt. I also respect the reason behind that observation, namely, that the law would fail to protect the community if it allowed fanciful possibilities to deflect the course of justice.

On probabilities which are very important in any case, there is further authority for the view that if the evidence against an accused is so strong as to leave only a remote possibility in his favour amounting to something that one could dismiss with the sentence, "of course, it is possible but not in the least probable" then the Crown in that case is said to have proved its case beyond doubt.

The position in which this injury was inflicted was on the deceased's upper part of the body. It pierced the deceased's heart, in such circumstances there is no other inference that one can make regarding the intention with which such an injury was inflicted except that it was with intent to murder. And on that score I do find that the accused did intentionally kill the deceased.

J U D G E

12th December, 1990

EXTENUATING CIRCUMSTANCES

I have just been addressed on factors which are intended to extenuate the unlawful act that you carried out against the deceased. They have been enumerated by your counsel, namely, that the wound that you inflicted was only one and therefore couldn't be said to have been in perpetration of a brutal murder. The next was that you had consumed liquor and that the deceased had constituted himsmelf a kind of a nuisance to you by claiming rights to the beer that had been offered to you.

Having considered these three and the fourth that your counsel advanced and taking also into account the fact that your counsel has ascertained with the Crown the correctness of the factual basis for the address given on your behalf and reasons advanced in that regard it is fitting, I find, that extenuating circumstances can be said to exist in this case.

SENTENCE

You have been telling me a lot of lies in this Court. I have taken only the last portion of the reasons advanced in mitigation namely that you have spent two years awaiting trial. I have to balance the interest of the society against your own interest. For the lightest of the excuses you have taken away a man's life. You will go to jail for 8 years.

J U D G E

12th December, 1990

For Crown : Mr. Qhomane

For Defence: Mr. Putsoane