

IN THE HIGH COURT OF LESOTHO

In the matter between:-

R E X

and

LETS'OLA-KOBO LEPHOTO

Accused

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola  
on the 24th day of September, 1990

The accused, Letsolakobo Abraham Lephoto, is charged with two counts of murder. In Count 1 it is alleged that upon or about the 22nd day of September, 1988, and at or near R.L.D.F. quarters in Maseru Reserve, in the district of Maseru, the said accused murdered 'Mabatho Lephoto. In the second count it is alleged that upon or about the 22nd day of September, 1988, and at or near R.L.D.F. quarters in Maseru Reserve, in the district of Maseru, the said accused murdered 'Makhotso Jane. The accused pleaded not guilty to both charges.

The defence admitted the depositions of the following witnesses at the preparatory examination:

P.W.1 Dr. Musoke Fred, P.W.2 Liphoto, P.W.7 Sergeant Jane, P.W.9 Warrant officer Mokatse, P.W.11 Lieutenant Thaanyane, P.W.12 Detective Sergeant Beli, P.W.13 Lt. Telukhunoana, P.W.14 Detective Trooper Lechesa and P.W. 15 Captain Sempe.

Dr. Musoke Fred testified that on the 27th September, 1988 he performed a post-mortem examination on the dead bodies of one 'Mamaria Lephoto as well as that of 'Makhotso Jane. He formed the opinion that as regards 'Mamaria Lephto death was due to extensive brain damage. Her body had the following wounds: a gunshot wound on the right femur plus a fracture, a gunshot wound on the left buttock, gunshot wound right ankle/joint: laterally and compound fracture of the skull with brain exposed and extensively damaged.

Regarding 'Makhatso Jane the doctor formed the opinion that death was due to head injury involving the brain. The bullet entered through the forehead, exit wound was on the mandible, re-entry into the mediasternum.

The first witness called by the Crown in this Court is 'Mamahali Jane who is the mother of 'Makhotso Jane, the deceased in Count 2. She testified that her husband and the accused are soldiers in the Royal Lesotho Defence Force (R.L.D.F.). The two families live in one house and have a common diningroom and a

common kitchen but separate bedrooms. On the 22nd September, 1988 she went to the hospital with the late 'Mabatho 'Mamaria Lepphoto who was the wife of the accused. They had gone there to visit her sister-in-law who was a patient there. On their arrival at the hospital they found that she had been discharged. From there they went to Fairways Supermarket where 'Mabatho bought some groceries and gave them to one Regina to take them home. They went to Lesotho Sun Hotel where 'Mabatho (deceased 1) was going to collect her money from one lady who works there. Deceased I was a hawker and had sold some articles to that lady. They returned to their home at R.L.D.F. quarters at about 5.00 p.m.

On their arrival at their home deceased I asked the whereabouts of her husband. She was told that he had gone to town. They i.e. the witness and deceased I, went to Tsilo's home because they had been invited there to go and help in the preparation for a feast about the removal of a mourning band. They worked at Tsilo's place until round about 7.30 p.m. when the wife of Tsilo gave her M20-00 to go to the canteen and buy some drinks for them. She went and bought twelve bottles of beer and three tins of soft drinks. She says that 'Matsilo and deceased I drank the beer and finished it. She did not drink beer that night because she was not feeling well.

After they had finished drinking the beer one Mahali arrived and told deceased I that the accused was outside and wanted to talk to her. She immediately went outside and after about five minutes the accused and deceased I came into the house. The accused

appeared to be normal and not angry. When 'Matsilo asked the accused why they stood outside, he said they had something to discuss. 'Mamahali says that after the arrival of the accused she said she was then leaving for her home to see her children. The accused said he would go there and see the children. It was about 7.30 p.m. He went and came back bringing twelve bottles of beer. He, 'Matsilo and deceased I drank the beer. At about 11.30 p.m. they, i.e. 'Mamahali, deceased I and the accused left for their home. On their arrival the accused went straight into his bedroom while deceased I remained in the kitchen. She (the witness) went into her bedroom and slept. She had been sleeping for a long time when she was awakened by her husband's younger brother who made a report to her.

As a result of that report she rushed to the accused's bedroom. She found that the accused was stark naked; he was on top of deceased I's child (Moleboheng Khapetla, P.W.4 in this trial); he was pressing her to the floor and hitting her with fists. The child was already bleeding from the mouth. She and the deceased I caught hold of the accused and removed him from the child. Then the accused attacked deceased I with a stick. 'Mamahali says that she managed to wrench away the stick from the accused and asked what was the matter. He said that he wanted to kill that woman and the child. She tried to cover him with blankets because he was naked but he punched her on the mouth. She left for her bedroom and put out the light. After that deceased I came in; she was running and her face was covered with blood. 'Mamahali says that she looked for the key in order to lock the door in case the accused decided to follow the deceased I. Before.

she could find the key the accused fired some shots at the door and entered into the bedroom. He stood in the middle of the bedroom and after insulting them said: "I am killing all of you."

After uttering those words the accused started shooting. He first shot the child 'Makhotso Jane (deceased 2) who was sleeping on a mattress on the floor. He shot her twice. He then shot deceased I many times until he had spent all ammunition. 'Mamahali says that she saw what accused did because she was hiding behind the door of a wardrobe but was in a position to see the accused who was still naked at that time. As he shot at the two deceased persons the accused was saying: "The woman I have married is a prostitute/whore and my parents have long said I should kill her. I am now killing her." After he had spent all his ammunition he left and closed the door. The two deceased persons were already dead when the accused left.

The accused and his wife used to lead a happy life but whenever the accused's mother visited them they used to fight very fiercely. These frequent fights took place after accused's mother had left. 'Mamahali denied that accused's mother visited them only once in July, 1988 after the deceased I had had a miscarriage. The accused was not drunk on the night in question and she denies that the accused had drunk any intoxicating drinks before he came home that evening because he looked sober.

It is 'Mamahali's evidence that one day prior to the present incident the accused said he would do something big to his wife and that when he did that big thing he would be naked so that people might think that he was mad. Two weeks prior to the present incident the accused had expressed his intention to kill his wife. When he expressed his intention they were in their shared house and on the following day she reported this to her sister 'Malerato.

The evidence of Private Kotzie and Private Senekane is to the effect that they are soldiers in the R.L.D.F. They are stationed at Ha Ratjomose. On the night of the 22nd September, 1988 between the hours of 10.00p.m. and 11.00p.m. the accused came to their house. He was running and shouting and calling the name of Private Kotzie. When he came into the house he reported to them that people had invaded him at his house and he was wondering whether his wife was still alive or not; he did not know how he had escaped. He appeared to be very excited and frightened. He also appeared to be serious about the report he was making. He was holding a Galile SAR rifle. They took their rifles and proceeded to the house of the accused, but when they came to the gate the accused said he was afraid of going to his house by that road and decided to take the upper road. They allowed him to take the upper road and they took his rifle. On their arrival at the house they found many people assembled there and those people did not appear to be the accused's attackers. They never saw the accused again that night.

Moleboheng Khapetla (.P.W.4) is a young girl of ten years of age. She is the daughter of deceased I who had not been fathered by the accused. Her evidence is to a large extent the same with that of 'Mamahali but as a child of tender years I have to approach her evidence with extreme caution. It became very clear when she gave her evidence that she could not make any distinction between what she actually saw and what she was later told by others. She testified that on the night in question she, accused and deceased I were in the bedroom. The accused put off all his clothes, he made her bed on the floor and then strangled her. The deceased I removed him from her and she ran away and went to 'Mamahali's bedroom. The accused later came and shot dead the two deceased persons.

P.W.5 'Mamosa Nailana testified that in September, 1988 she was working for 'Mamahali Jane. On the night of the 22nd September, 1988 the accused, deceased 1 and 'Mamahali found her sleeping in the sittingroom with one Regina. Later that night she heard that the accused and deceased 1 were fighting in their bedroom. 'Mamahali was called and asked to stop the fight. She came and entered into the bedroom. She came out accompanied by Moleboheng Khapetla and returned to her bedroom with the child. The deceased 1 came out and reported that the accused was holding a Government's gun. They all went into 'Mamahali's bedroom. After a short while the accused came and shot at the door before entering. He first shot twice at 'Makhotso Jane (deceased 2) and she (the witness) covered her head with blankets because she was frightened. After that the accused continued shooting for a long time. When he stopped she uncovered her head and saw that he had

gone and that the two deceased persons were already dead. She saw that the accused was naked when he came into 'Mamahali's bedroom. He did not say anything during and after the shooting. If he said something during the shooting she could not hear because of the noise of the gun.

The accused is member of the R.L.D.F. On the 22nd September, 1988 he knocked off at 4.30 p.m. and went to Maseru bus stop where he was going to meet a friend named Teba. Not finding Teba at the bus stop he came back and called at Olympic Restaurant where he bought about four quarts of beer and drank them alone. He had arrived at the restaurant at about 6.30 p.m. and remained there for about one and half hours. He returned to his house and found Regina in the sittingroom. He passed to his bedroom but found that the deceased 1 was not there. He wanted to open the wardrobe but did not know where the keys were. He asked Regina where his wife was. She said she had gone to Tsilo's place. He sent Mahali to go and call her. She came after Mahali had been sent there twice. She gave him the keys and told him that 'Matsilo wanted to see him. He went there with her and they found the following people drinking beer: 'Matsilo, 'Mamahali and two ladies who were strangers to him.

'Matsilo asked him why he called his wife and after he had explained she gave him a tin of beer. He sat down and joined them in drinking beer. They remained there for a long time because at one stage he also bought some more beer. However, he is unable to estimate the quantity of beer he drank at 'Matsilo's place.



He was drunk when they eventually left for their home. He was accompanied by his wife and 'Mamahali. He went straight to his bedroom accompanied by his wife. He sat on the bed and put off his skipper and shoes. At that time his wife was making a bed for her daughter Moleboheng who was on their bed. He then told his wife that he did not like the things she was doing because she had just removed the mourning cloth in connection with the miscarriage she had. On the 20th September, she had accompanied one 'Malerato to the hospital but came back home at 2.00 a.m. on the following morning accompanied by 'Mamahali Jane. In answer to his warning his wife said he was troubling her by referring to past events and she insulted him. He rose from the bed and caught hold of her. That is the last thing he remembers and does not know what happened thereafter. When he regained his senses he was in the charge office on the following day. He therefore does not deny that he did all the things alleged against him. He thinks that he lost his senses because of drunkenness as he is not a regular drinker.

Cross-examined by Mr. Qhomane, Crown Counsel, the accused said that he did not remember that he went to ha Ratjomose where he is alleged to have made a report to Privates. Senekane and Kotxiti that people were attacking his house. He does not remember when and how he was arrested because when he came to he was in the cell at the Central Charge Office. He knows the gun before Court but he does not know that he used it to shoot and kill his wife and 'Makhatso Jane. He says that it is surprising that 'Mamahali did not report to her husband that he (accused) was threatening to kill his wife. During that period 'Mamahali's husband was attending a

course here in Maseru and he frequently visited his home. However, when the killing of the two deceased persons took place 'Mamahali's husband was on patrol in Mokhotlong district.

Dr. L.N. Mohapeloa testified that he examined the accused between the 20th April and the 24th July, 1990. He found that the accused was of average intelligence and he showed no signs of mental abnormality. He formed the opinion that he was perfectly fit to stand trial. As to his probable state of mind at the time of the alleged offence, he is of the opinion that the accused suffered from an alcoholic black-out. As a result of intoxication and anger he probably lost control over his actions. He is unable to recall what happened until the following morning. There is no past history of mental illness or even a previous alcoholic black-out.

Dr. Mohapeloa said he knew of no method of determining conclusively that a patient had an alcoholic black-out. His examination includes what the patient and other people tell him. Usually an alcoholic black-out occurs to people who have been drinking heavily or regularly over a long period. He was certain that the accused had an alcoholic black-out. (His medical report was handed in as part of his evidence and marked Exhibit B).

Mr. Mohau, for the accused, submitted that as there has been proof by medical evidence that the accused had an alcoholic black-out at the time he killed the two deceased persons, he must be acquitted and discharged on both counts. He referred us to the case of S. v. Chretien 1981 (1) S.A. 1097 (A.D.). The headnote of that case reads as follows:

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"Whenever a person who commits an act is so drunk that he does not realise that what he had done was unlawful or that his inhibitions have substantially disintegrated, he can be regarded as not being criminally responsible. If there is a reasonable doubt, the accused ought to be given the benefit thereof.

Someone who is dead drunk and is not conscious of what he is doing is not liable because a muscular movement which is done in this condition is not a criminal act. If someone does an act (more than an involuntarily muscular movement) but is so drunk that he does not realise what he is doing or that he does not appreciate the unlawfulness of his act, he is not criminally responsible. A court will only come to the conclusion, or have a reasonable doubt, in the ground of evidence which justifies it, that, when someone indeed commits an act (or omission) which is an offence, he was intoxicated to such an extent that he was not criminally responsible."

Mr. Mohau submitted that at the relevant time the accused was incapable of forming any intention to kill the deceased persons. The Crown must prove the existence of the essential specific intent in a case where the defence is that the specific intent was absent by reason of the intoxication of the accused (R. v. Vermeulen 1953 (4) S.A. 231 at p. 237). I agree with this submission because it is on all fours with subsection 4 of section 2 of our Criminal Liability of Intoxicated Persons Proclamation No.6 of 1938 which provides that 'intoxication shall be taken into account for the purpose of determining whether the persons charged had formed any intention, specific or otherwise, in the absence of which he would not be guilty of the particular offence charged.' It seems to me that where the accused is charged with murder and the defence proves drunkenness, the onus remains on the Crown to prove beyond any reasonable doubt that although the accused was drunk he still had the capacity to form the specific intent required in murder.

I do not propose to discuss all the cases dealing with alcoholic black-out, amnesia or automatism because in the instant case the issue is whether the accused did in fact have the alleged black-out. In Rex v. Blyth Monanthane CRI/T/14/77 dated 27th October, 1977 (unreported) Cotran, C.J. said:

"It is the kind of defence that can rarely be refuted directly but by consideration of a number of factors which include inter-alia medical evidence if any, the surrounding circumstances, the accused's previous history, his conduct and behaviour generally, at the material time and after, and having elected to go into the witness' box the impressions that he creates in the mind of the Court on this issue. Mr. Muguluma submitted that the accused's alleged loss of memory is feigned, (I will deal with this in a moment) but that even if it is not, the accused, having expressed his intention to kill someone at work from early that morning, first to Teboho Likoekoe in the elevator, when, on his own admission, (but for a hangover) he was in his full and sober senses, which intention continued uninterrupted to later in the morning, as evidence by Mannoko and Morgan during his sojourn at the former's house, which threats he in fact carried out on persons within the class that had aroused his wrath, in murder and this is so irrespective of the method the accused had employed to get himself into such state. In other words the situation here is the one known as actio libera in causa. I am in entire agreement with this proposition and it follows that on the facts as I believe them, the question of "specific intent" that affords an accused a defence under Proclamation 60 of 1938 (Vol.++ Laws of Lesotho p. 997) does not arise. There is abundance of authority to support it."

In the case of the Attorney-General for Northern Island v. Gallagher, (1961) 3 All E.R. 299 at p. 312 Lord Denning is reported as having said:

"My Lords, this case differs from all other in the books in that the respondent, whilst sane and sober, before he took to the drink, had already made up his mind to kill his wife. This seems to me to be far worse - and far more deserving of condemnation - than the case of a man who, before getting drunk, has no intention to kill, but afterwards in his cups, whilst drunk, kills another by an act which he would not dream of doing when sober. Yet, by the law of England, in this latter case his drunkenness is no defence even though it has distorted his reason and his will-power. So why should it be a defence in the present case? And is it made any better by saying that the man is a psychopath? The answer to the question is, I think, that the case falls to be decided by the general principle of English law that, subject to very limited exceptions, drunkenness is no defence to a criminal charge nor is a defect of reason produced by drunkenness."

At page 314 His Lordship said:

"My Lords, I think the law on this point should take a clear stand. If a man, whilst sane and sober, forms an intention to kill and makes preparation for it, knowing it is a wrong thing to do, and then gets himself drunk so as to give himself Dutch courage to do the killing, and whilst drunk carries out his intention, he cannot rely on this self-induced drunkenness as a defence to a charge of murder, nor even as reducing it to manslaughter. He cannot say that he got himself into such a stupid state that he was incapable of an intent to kill. So, also, when he is psychopath, he cannot by drinking rely on his self-induced defect of reason as a defence of insanity. The wickedness of his mind before he got drunk is enough to condemn him, coupled with the act which he intended to do and did do. A psychopath who goes out intending to kill, knowing it is wrong, and does kill, cannot escape the consequences by making himself drunk before doing it."

In the instant case we have the evidence of Dr. Mohapeloa who says that it is probable that the accused had an alcoholic black-out when he killed the deceased persons. He based his

conclusion mainly on the interview he had with the accused. When his attention was drawn to the fact that about two weeks before the killings the accused had expressed an intent to kill his wife, he said that would cast a doubt that the accused had a black-out. He went further to say an alcoholic black-out usually occurs to people who have been drinking heavily and on a regular basis. In his own evidence the accused said that he was not a regular drinker. He also said that on those occasions when he drank he did not know that he drank excessively.

The accused has never had any previous history of alcoholic black-outs or any disease of the mind. Just before they left 'Matsilo's place the accused did not appear to be drunk according to 'Mamahali Jane and Jane Jane whose deposition was admitted by the defence. According to Jane Jane when he entered into accused's bedroom the accused asked him to help him as he wanted to take out his wife's teeth. Jane pleaded with him to leave his wife alone. When 'Mamahali and deceased 1 went out the accused said since Jane had refused to assist him he would shoot all of them. He (accused) went to the side of his bed. Jane left the house intending to call his uncle. When he returned to the house the accused had shot and killed the deceased persons. 'Mamahali Jane had seen the accused when drunk on several previous occasions but on this particular occasion the accused appeared not to be drunk.

The evidence of Moleboheng, who was in the house when the fight started, is that the accused made her bed and then he put off all his clothes. He strangled her. The deceased 1 intervened and

tried to remove him. It was at this stage that she insulted the accused. 'Mamahali arrived during this struggle and joined in the attempt to remove the accused from the child. If the accused is not feigning the so-called black-out, why does he not remember that the first thing he did when he came to the bedroom was to make a bed for his step-daughter and then to strangle her? According to him the last thing he remembers is when he held his wife after she had insulted him. The evidence which I have believed and which was not challenged by the defence is that the accused first attacked his step-daughter and that he was already naked at that stage. His black-out came after he had been strangling the child and only after his wife had insulted him for what he was doing to the child. I am convinced that the accused feigned the black-out but failed to plan the events in such a way that his evidence would not conflict with that of Moleboheng Khapetla and 'Mamahali Jane.

The accused behaved in a perfectly normal way while they were at the home of 'Matsilo and even before then he had called his wife to come home because he wanted the wardrobe key. He did not show any signs of being dead drunk at that stage. When they left 'Matsilo's place he was still not showing any signs of being drunk. He also remembers well what he said when they left 'Matsilo's place but deliberately and conveniently distorts the facts when he arrived at his home so that they can fit into his story of black-out.

Having shot and killed the deceased persons, he returned to his bedroom and put on his clothes before going to the home of Privates Senekane and Kotzie. When he arrived there he appeared to be agitated and made a false report that people were attacking his house and that he did not know whether his wife was still alive or not. According to the two privates the accused seemed to be serious about the report he was making. As a result from this report they went to accused's home. He accompanied them but on the way he said he was afraid of going to his home by that road and suggested that he would use the upper road. He never arrived at his home. It seems to me that even after the shooting the accused's mind was still very clear and was able to deceive Privates Senekane and Kotzie that he was going to his home by the upper road when he knew very well that he was not going there. It is correct that he appeared to be excited and frightened but that does not imply or show that he was suffering from an alcoholic black-out.

The last and most important piece of evidence to rebut the allegation that the accused had a black-out is that a few weeks before he shot and killed his wife he had threatened to do a big thing to his wife and had said that when he did that thing he would be naked so that people might say he was mad. Mr. Mohau submitted that 'Mamahali was lying because she never raised this point at the preparatory examination nor in her evidence-in-chief; but it came up under cross-examination when she was hard put to it to tell an obvious lie that as far as she could tell, the accused appeared to be in control of his senses or quite conscious of what he was doing that night. I do



not understand why Mr. Mohau accuses 'Mamahali for lying when she says that the accused appeared to be in full control of his senses or quite conscious of what he was doing that night. When he came into 'Mamahali's bedroom he swore at them all and said that he was killing all of them. There is no evidence that he was going berserk at that stage nor at a later stage when he came to Privates Senekane and Kotzie.

It is quite true that 'Mamahali did not mention the threat in her evidence at the preparatory examination and in her evidence-in-chief in this Court. However, that does not necessarily mean that she is telling a lie. At the preparatory examination and in her evidence-in-chief in this Court she was let by the public prosecutor and the Crown Counsel respectively. They put specific questions to her and expected her to answer them accordingly. In cross-examination a witness must answer the questions put to him and in the course of answering such questions he might come up with something completely new, something that both the public prosecutor and the Crown Counsel never raised when they led the witness. The purpose of cross-examination is to raise new but relevant matters which may have been overlooked by the witness in his evidence-in-chief. In answering such questions the witness cannot be accused of lying. In a proper case it can be argued that something is an afterthought. It must be shown <sup>that</sup> the same issue was raised but the witness did not say what he later says.

I think the answer was relevant because 'Mamahali was rebutting an allegation that the accused was firing wildly and that he was not in control of his senses. She testified that she reported the threats by the accused to kill his wife to one 'Malerato Jane and not to her husband who was apparently in Mokhotlong on patrol. The impression I had of 'Mamahali Jane as a witness was that she was honest and truthful. She was honest enough to tell the Court that although she used to be a friend of the accused and his wife, after the murder of her daughter she hates the accused. I think her reaction or attitude towards the accused after the gruesome killing of her daughter is a normal and natural reaction of a parent to person who has killed his or her child. She did not tell a lie that her attitude towards the accused was still normal and cordial.

It is quite correct that during the trial the Court did make a remark that 'Mamahali Jane was exaggerating when she said she watched the shooting from the start to the end whilst hiding behind the door of a wardrobe. The normal reaction to such a shooting by a normal person would be to hide oneself so that the accused could not see him. 'Mamosa Nailana (P.W.5) reacted to the shooting in a normal way expected of a normal person by completely covering herself with a blanket so that the accused could not see her. Although 'Mamahali Jane exaggerated on this point I believed her evidence on other points including the fact that a few weeks before he killed his wife the accused had expressed an intention to kill her.

I am convinced that the accused formed the intention to kill his wife at the time he was sane <sup>and</sup> sober and attempted to

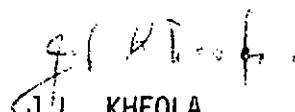
get himself drunk so that he could carry out his intention. Unfortunately he did not succeed to get himself so drunk that he could not know what he was doing.

I have come to the conclusion that as far as the killing of his wife is concerned the accused had the necessary intention in the form of dolus directus. His allegation that he had a black-out which deprived him of the capacity to know what he was doing is false and I reject it. It is not supported by an extraneous evidence (See Rex v. Ngaka Lehlohonolo 1980 (2) L.L.R. 541 at p. 557).

Regarding the second deceased Makhotsa Jane there is no evidence that the accused had ever expressed any intention to kill her. However, when he got into the bedroom he uttered words to the effect that he was killing them all and started shooting indiscriminately all over the house. He shot her twice on the head and he foresaw that his act was likely to cause the death of the deceased but was reckless. I come to the conclusion that he had the requisite intention in the form of dolus eventualis.

I find the accused guilty of murder in both counts.

My Assessors agree.

  
J.L. KHEOLA  
JUDGE

24th September, 1990.

EXTENUATING CIRCUMSTANCES

It is common cause that just before the accused killed the deceased persons he had been drinking beer at the home of one 'Matsilo. It was not established what the exact quantity was that he drank at that stage. However, the long time they spent seems to suggest that they had enough beer to keep them there.

He testified that he had already drunk four bottles (each 750 millilitres) at Olympic Restaurant earlier that evening. I am convinced that the beer he had taken had an effect on his mind but he was not so drunk that he did not know what he was doing. I am satisfied that drunkenness taken not in isolation is a factor to be taken into account.

The deceased 'Mabatho Lephoto provoked the accused by insulting him when she found him ~~strangling~~ the child. She was entitled to say and to do what she said and did because the accused was assaulting her daughter. But the insult was enough to enrage the accused even further and provoked him to such an extent that he assaulted her. This kind of provocation could not be raised as a defence but it can be taken into account as an extenuating factor.

The cumulative effect of drunkenness and provocation leads this Court to the conclusion that there are extenuating circumstances.

The influence the accused's mother had on him is a factor that was considered by the Court in conjunction with other factors.

As far as the killing of the deceased 'Makhotso Jane I found that there was no premeditation and that the intention was one known as dolus eventualis.

I find that there are extenuating circumstances.

SENTENCE: In passing sentence I took into account that the accused is a first offender and that his behaviour as a soldier was very good. However, as a soldier he was a peace officer and was supposed to uphold the law and to protect the lives of the members of the community in which he lived. He has failed in his duty as a peace officer by not only killing his wife but also an innocent ten-year-old child.

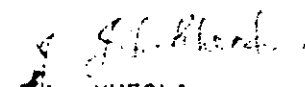
His taking of liquor in order to have courage to kill his wife is an aggravating circumstance. Taking all the factors into consideration the accused is sentenced as follows:

In Count I:- Twenty (20) years' imprisonment.

In Count II:- Twelve (12) years' imprisonment.

Sentences to run concurrently.

My assessors agree.

  
J.L. KHEOLA  
JUDGE

24th September, 1990

For Crown - Mr. Qhomane

For Defence - Mr. Mohau.