

IN THE HIGH COURT OF LESOTHO

In the matter between:-

R E X

and

MOEKANE CHAKATSA

J U D G M E N T

Delivered by the Honourable Mr. Justice J.L. Kheola  
on the 26th day of September, 1990

The accused is charged with two counts of murder. In Count I it is alleged that upon or about the 25th day of May, 1989, and at or near Majakaneng in the district of Thaba-Tseka, the said accused unlawfully and intentionally killed Phoka Jonkoro. In Count II it is alleged that on the 25th day of May, 1989, and at or near Majakaneng in the district of Thaba-Tseka, the said accused unlawfully and intentionally killed 'Mampitla 'Maitumeleng Chakatsa. The accused pleaded not guilty to both charges.

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The defence counsel, Mr. Mafisa, admitted the depositions of the following witnesses at the preparatory examination: P.W.3 'Maphoka Ntsane, P.W. 4 'Manyefolo Maseli, P.W.5 Maeza Koloane, P.W.6 Paseka Namane, P.W.7 White Lerotholi, P.W.8 Detective Trooper Ramone, P.W.10 Dr. A. Fisdbacke, P.W.11 Dr. Leresche and P.W.12 'Maphehello Jonkoro.

The admitted evidence relates to the identification of the deceased persons before the two doctors who performed post-mortem examinations on the dead bodies of the deceased persons; to the fact that the round hut in which the deceased were sleeping was completely destroyed by fire; there were pieces of human flesh on the window-sill which indicated that the deceased persons or one of them got out through the window and that both deceased persons died as a result of second degree burns over 70% of the body surface which resulted in great loss of fluid and in consequence failure of the heart and the kidneys.

Lehlohonolo Lelala (P.W.1) is an accomplice. He testified that in May, 1989 he was working with the accused and others as a team involved in building houses for reward for people in the Thaba-Tseka area. On the 25th May, 1989 he was at Ntlatlapa's bar with the accused and Tita Lelala (P.W.2) . They drank pineapple beer for the whole of that day and they were all drunk when they left that place late at night. The two deceased were present at the bar and were seen drinking beer. At one stage during the day the accused went outside and called him (P.W.1) and his brother,

Tita Lelala (P.W.2). He told them that the deceased Phoka Jonkoro, looked down upon him and he (accused) felt like assaulting him or burning him because he was in love with his elder brother's wife. P.W.2 reprimanded him and warned him not to say such a thing. They all went into the bar and continued drinking until late at night.

P.W.2 and his girlfriend, Mosimotsana, were the first to leave the bar that night and were followed by P.W.1 and the accused whose destination was the home of the deceased, 'Mampitla Chakatsa. Phoka had left the bar much earlier than P.W.2. P.W.1 says that when they came to Lekoko's place the accused picked up a small bundle of straw. He did not ask the accused what he was going to do with the straw but assumed that he was going to use it for lighting in the house. When they left the bar they did not discuss their destination but he noticed that the accused was going in the direction of 'Mampitla's place and he assumed that he was going to collect his belongings because at one time he stayed at 'Mampitla's place. When they arrived at 'Mampitla's place he (P.W.1) stopped at a distance of about twelve paces from the house because he was passing water. The accused went to the door and he (P.W.1) thought that he was opening the door. The accused was actually fastening the latch of the door with a wire in such a way that the door could not be opened from inside. This is what he was later told by the accused.

Having thus fastened the door the accused lit the small bundle of straws he had brought and then set on fire the front part of the house and then the back part of the house. The house in question was a small hut roofed with straw. When they left the hut the straw-roof was already burning. They arrived at their place and found P.W.2 and Mosimotsana. The accused reported to P.W.2 that he had burnt those people into the house but did not explain which people he had burnt and into which house. They slept and at dawn the accused left for a circumcision school where the initiates had completed their course and were to come home on that day.

Under cross-examination P.W.1 revealed that the accused and the late Phoka were not friendly to each other, although they sometimes conversed with each other it was always not in a pleasant manner. Sometimes when the accused greeted the late Phoka, the latter did not respond. P.W.1 did not say anything when P.W.2 reprimanded the accused because he did not take the threat seriously. He saw that when Phoka left 'Mampitla remained behind. When the accused set the house on fire he did not do anything nor raise alarm despite the fact that there was no agreement between them. After he was arrested he denied any knowledge about the death of the deceased. He only told the police the truth after some months or after two weeks.

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Tita Lelala (P.W.2) confirmed that when they were at Ntlatlapa's bar the accused said he felt like fighting or burning the late Phoka into a house. He reprimanded him and it appeared as if he heeded his reprimand. He left the bar at about 9.00 p.m. and went to his house. Later that night the accused and P.W.1 arrived. The accused made a remark that he did not know how those people would escape and that they would burn in that house. He asked the accused what he would say if those people were found burnt in the house. On the following morning when it was reported that the deceased were burnt into the house, he asked P.W.1 what they did after he left them at the bar, P.W.1 said that the accused went away and left him at the bar for a short time but he did not know where he had gone to.

P.W.2 deposed that after the accused had made the threats he immediately warned the late Phoka about them. But he was surprised that Phoka went to 'Mampitla's house on the night of the same day on which the threats were made.

The evidence of Detective Sergeant Mongaula is not very helpful to the Court because in May, 1988 when the offence was committed he was here at the High Court and only went to Thaba-Tseka in July, i.e. after two months. He went to the scene of the crime and found that the house in question had been destroyed by fire and found a piece of wire (allegedly pointed out by the accused).

It was inside the house (wall) just near the door. On the 31st July, 1988 having arrested the accused and the two Lelala brothers, he again left for Maseru and does not know what happened to the accused and the accomplice. His assertion that after he had left, the accused could not have been detained by the police for three weeks is not supported by any evidence. The record of the preparatory examination shows that the first remand was on the 8th August, 1988. This means that after his departure the accused remained in police custody for at least eight (8) days before the formal remand.

The wire found at the scene of the crime does not prove anything because if the Crown intended to prove that it was used in the fastening of the door, it (the wire) does not support that contention. If the wire had been used for that purpose then it would have been found still attached to the latch or the handle of the lock. The latch or lock and its handle were not exhibited in this Court and there is no evidence that they were found at the scene of the crime. The wire alone does not prove anything because it is not even twisted in such a way as to show that it was used in fastening something.

The investigations of this case were delayed to such an extent that vital exhibits, which could probably confirm the story of P.W.1 that the door was fastened were not found.

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The Crown has failed to prove that the door was fastened in such a way that it could not be opened from the inside. The mere fact that human flesh was found on the window-sill does not necessarily prove that both deceased persons got out through the window. One of them might have got out through the door.

Section 229 (2) of the Criminal Procedure and Evidence Act 1981 provides that

"Evidence may be admitted that anything was pointed out by the person under trial or that any fact or thing was discovered in consequence of information given by such person notwithstanding that such pointing out or information forms part of a confession or statement which by law is not admissible in evidence against him on such trial."

Mr. Sakoane, counsel for the Crown, submitted that the accused pointed out the wire which was allegedly used in the fastening of the door. I do not think that this is a proper case of pointing out because the fact that the house in question had been set on fire was known by all the people in that village including the police. It was also suspected that the deceased persons got out through the window because the door was fastened from outside in such a way that the people inside could not open the door. The accomplice had already told the police about the fastening of the door with a wire.

For these reasons it cannot be said that the accused led the police to the house and pointed out something that was not known. Even if the accused did go to the house with the police and showed them a piece of wire lying near the door, that does not mean that he pointed it out in terms of section 229 (2). The police went there with full knowledge that a wire had been used and that it was likely to be found near the door. In addition to all this knowledge they already had, they decided that the accomplice and the accused should be together when the so-called pointing out was done. It is the accused's allegation that it was the accomplice who showed the policeman that piece of wire.

The accomplice is a liar who should not be believed under any circumstances. On the following morning when a report was made that the deceased persons had been burnt, P.W.2 Tita asked his brother (the accomplice) what he and the accused had done after he left them at Ntlatlapa's bar. One would have expected the accomplice to have told his brother the truth because at that time the accused, whom he alleges to have been very much afraid of was not there. Instead of telling him the truth he lied and said while they were at the bar the accused went away leaving him there for short while. He was already implying that the accused must have gone to the house in question, set it on fire and then returned to the bar.



Under cross-examination P.W.1 said that he just thought that the accused was fastening the door because people were burnt into that house. He later said that when they left the house already in flames the accused told him that he had fastened the door with a wire. These two conflicting statements prove beyond any reasonable doubt that P.W.1 is a liar.

The accused has testified that after he and the Lelala brothers were severely assaulted by the police he agreed to go before a magistrate to make a confession. He said he was accompanied by policeman Ramakatane. When he appeared before the magistrate he told him he knew nothing about the alleged offence. He told the magistrate that it was only after severe assaults that he agreed to implicate himself. The magistrate wrote a letter and gave it P.W.3 ordering him to take him (accused) to the hospital.

This allegation has not been challenged by the Crown either in cross-examination or by calling the magistrate and policeman Ramakatane to rebut it. It may well be that the Crown thought that the allegation has no bearing on their case. I do not think so because it proves that the accused and the Lelala brothers were not only detained for a long time but also that during that period they were severely assaulted. In his evidence the accused stated that they were belaboured by the police until he decided to make a confession but when he came to the magistrate

he changed his mind and told him that he knew nothing about the commission of that offence. Detective Sergeant Mongaula is not in a position to deny these allegations because he remained at Thaba-Tseka for only a few days and left the accused in the custody and care of other policemen.

The Crown did not dispute the fact that a few days before the events which give rise to these proceedings the deceased Phoka Jonkoro took some saucepans and a primus stove belonging to his wife 'Matseviso and gave them to the deceased 'Mampitla Chakatsa. The removal of her property from her own home to the home of a concubine infuriated 'Matseviso so much that she went to 'Mampitla's home. After a heated altercation and exchange of insulting words 'Matseviso took her property and returned it to her house. Before leaving 'Mampitla's house she said, "You will see me you 'Mampitla. You cannot take my husband and then my utensils." The accused says that he was present at Ntlatlapa's bar when 'Mampitla reported her confrontation with 'Matseviso. He (accused) even warned 'Mampitla that she was breaking up Phoka's marriage.

Thereafter Phoka immediately left for his house and on arrival there he assaulted his wife and again took the utensils and gave them to 'Mampitla at the bar where she was working. There is no doubt that 'Matseviso was treated in a very insulting and humiliating manner by her husband. Having earlier made a threat

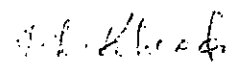
that the deceased 'Mampitla would see her it seems that the assault upon her and the second removal of her utensils back to 'Mampitla must have made her very bitter. I think the police ought to have regarded 'Matsepiso as one of the suspects inasmuch as she had a good motive to kill the deceased persons who were treating her with the utmost contempt and humiliation. According to the evidence of the Crown, 'Matsepiso was never interrogated and it was submitted on behalf of the accused that she had a good reason or cause and opportunity to set the house on fire in order to burn the deceased persons. I entirely agree with this submission.

P.W.1 and P.W.2 give conflicting versions of what the accused said when he and P.W.1 arrived at the house of P.W.2. P.W.1 says that he said that he had burnt those people into the house. He however did not give the names of the people he was referring to. P.W.2 denies this and says that the accused said that he was wondering how those people would escape and that they would burn in that house. When he (P.W.2) asked him what he would say if those people got burnt, accused did not answer that question.

It is also likely that when the accused and P.W.1 left the bar that night deceased 'Mampitla remained at the bar because she was the person who was selling the beer. The accused did not leave the bar at the closing time but left while the selling of beer was still going on. It is therefore unlikely that when the accused and P.W.1 left the bar and went straight to 'Mampitla's house and allegedly set it on fire, 'Mampitla could have arrived at her place. The indications are that they left her at the bar and that the house was set on fire long after they had arrived at their place.

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I have considered the evidence of the Crown and the defence and have come to the conclusion that the Crown has failed to prove its case beyond a reasonable doubt. I accordingly find the accused not guilty.

  
J.L. KHEOLA  
JUDGE

26th September, 1990.

For Crown - Mr. Sakoane  
For Defence - Mr. Mafisa.