

IN THE HIGH COURT OF LESOTHO

In the Matter of :

R E X

VS

CLEMENT KORI

J U D G M E N T

Delivered by the Hon. Mr. Justice B.K. Molai
on the 15th day of October, 1990.

The accused is charged with the crime of murder
on the following allegations:

"In that on or about the 5th day of
May, 1987 and at or near Koro-Koro
in the district of Maseru the said
accused did unlawfully and intentionally
kill Khauta Patrick Mothibe."

When the charge was put to him the accused pleaded not guilty.
Mr. Nathane who represents the accused in this case
told the court that the plea of not guilty, tendered
by the accused, was in accordance with his instructions.
The plea of not guilty was accordingly entered.

It may be mentioned from the word go that by
agreement of both Mr. Nathane and Mr. Thetsane, counsel
for the crown, the post-mortem examination report per-
formed on the body of the deceased was handed in from the

2/ bar as

bar as Exh. A. The medical Doctor who had conducted the post-mortem examination was accordingly not called to testify in this trial.

The court heard the evidence of P.W.5, D/Tper Ramakeoane, who testified that on the day in question, 5th May, 1987 he received a certain report following which he proceeded to the fields at Koro-Koro. He found the dead body of the deceased and many people already gathered there. He examined the body of the deceased for injuries and found that it had sustained multiple stab wounds on the head, chest, back and all over the body. He counted altogether 21 stab wounds. He conveyed the body of the deceased in a police vehicle to the mortuary in Maseru and assured the court that it sustained no additional injuries whilst it was being transported from Koro-Koro to the mortuary.

According to Exh A, the post-mortem examination report, the body of the deceased was examined by a Medical Doctor on 6th May, 1987 at Queen Elizabeth II hospital. The external examination revealed multiple stab wounds on the back, chest skulp and lips. The Medical Doctor confirmed that there was a total of 21 stab wounds.

On opening the body it was found that there was a laceration of the (L) ventricle, resulting in haemopericardium. On these facts the Medical Doctor formed the opinion that death was due to haemopericardium as a result of a stab on the heart.

3/ I am prepared

I am prepared to accept the undisputed medical evidence that the deceased died as a result of the injuries found on his body. The important question, in this regard, is whether or not the accused is the person who inflicted the injuries on the deceased, and, therefore, brought about his death.

In his evidence P.W.1 told the court that on the afternoon of 5th May, 1987 he was working in his field. There was a time when he went to relieve nature in a donga. As he was going to the donga P.W.1 noticed the accused, who had been looking after a horse next to deceased's field, walking on the boundary of his (P.W.1's) field. He was being followed by the deceased. Shortly after he had noticed the accused and the deceased following each other on the boundary of his field, P.W.1 heard a voice saying : "What have I taken?" The voice came from the direction of the accused and the deceased. He could not, however, recognise whose voice it was between the accused and the deceased.

When he looked in the direction of the accused and the deceased P.W.1 noticed that the two men were engaged in a physical struggle. The accused who was also wielding a knife threw the deceased to the ground and started delivering several blows at him with the knife. P.W.1 immediately rushed to where the accused and the deceased were fighting. On arrival he found the accused on top of the deceased and stabbing him all over the body with the knife. He pleaded with him to leave the deceased alone as he had already finished

4/ him.

him. The accused, however, left the deceased and attacked him (P.W.1) with the knife. P.W.1 ran away. The accused chased after him for a short distance before returning to where the deceased was lying prostrate on the ground and continued stabbing him.

According to him, P.W.1 then went to raise an alarm as a result of which many people came to the scene. As he and the other people were going to where the deceased had been assaulted by the accused P.W.1 noticed the latter disappearing into a nearby poplar tree plantation. On arrival to him he found the deceased already dying. The police were sent for and eventually came to the scene of crime.

In as far as it is relevant, the evidence of P.W.1 was corroborated by that of P.W.2, 'Ma-Isaac Mothibe, who told the court that she was, on the day in question, one of the people working in the fields. Following the alarm raised by P.W.1 she did not, however, actually go to the spot where the accused had been assaulting the deceased. The reason for that was because none of the people who came to where the deceased was, appeared to assist him up. She assumed, therefore, that the accused had left the deceased dead.

The evidence of P.W.3, Makoe Mothibe, is to the effect that he is the headman in the village of the accused and the deceased. The accused is therefore, his subject and so was the deceased who was, in fact, his

5/ own brother

own brother. In April, 1987 he had confronted the accused and the deceased over a complaint made by the latter that the former was damaging his maize in the field. On 5th May, 1987 he came down to Maseru. On his return home, from Maseru, he received a certain report following which he proceeded to the fields where he found the dead body of the deceased. It had bleeding injuries. Many people had already gathered there. He returned to Maseru intending to find a vehicle with which to convey the body of the deceased to the mortuary. Before he could reach Maseru, P.W.3, however, found a vehicle at the village of Ha Phohleli. He returned to the scene of crime where he was, however, advised not to remove the dead body before the police had arrived.

P.W.3 then went to Maseru and reported what had happened to the police who immediately proceeded to the scene of crime. He confirmed the evidence of P.W.5 that the body of the deceased was examined for injuries before it was transported to the mortuary. P.W.3 did not, however, accompany the body to the mortuary.

On 6th May, 1987 he went to the deceased field next to where his dead body was found. He noticed that fire had been made next to a willow tree outside the deceased's field. The tree got burned and the fire was still smouldering. He also found two maize cobs next to the spot where the fire had been made. The maize cobs had not yet been roasted.

6/ In his

In his testimony P.W.4, D/Tper Kharafu, told the court that on 6th May, 1987 he was stationed here in Maseru when the accused surrendered himself and handed over a knife. Following an explanation which he made to him P.W.4 cautioned and charged the accused with the murder of the deceased. He took possession of the accused's knife and it had since been in the custody of the police.

It is significant that the accused gave no evidence in this trial. Considering the evidence adduced by the crown there can be no doubt that the accused was seen by P.W.1 and P.W.2 brutally assaulting the deceased at the very spot where his dead body was later found. That being so, the answer to the question I have earlier posed viz. ~~whether~~ or not the accused is the person who inflicted the injuries on the deceased and, therefore, brought about his death must be in the affirmative.

It has been argued that as he suspected the accused to be damaging his maize in the field the deceased was the one who unlawfully attacked the accused and the latter acted in self-defence. No evidence was, however, given in support of the accused's defence of self-defence. Even assuming, for the sake of argument, that the deceased was the first aggressor, there is simply overwhelming evidence that the accused continued stabbing the deceased who had already fallen to the ground and was therefore, posing no danger, at all, to the accused's life. That

7/ being so,

being so, it must be accepted that the accused exceeded the bounds of self-defence which cannot, in my view, avail him.

Although under cross-examination P.W.1, 2 and 3 assured the court that the accused was not a mentally deranged person, Mr. Nathane, counsel for the defence, informed the court that during his interview with the accused he got the suspicion that he suffered from a mental illness of some sort. I must say I observed the accused as he sat in the dock during his trial. He appeared to be normal. However, neither me nor the witnesses who testified in support of the crown case are experts in the field of mental diseases. In the light of the information given by the defence counsel coupled with the ruthless manner in which the accused assaulted the deceased there was, in my view, a possibility that the accused might be suffering from a mental disorder. I considered it safe, therefore, that the accused should be referred for observation by a psychiatrist who was called to testify on behalf of the defence.

D.W.1, Dr. Mohapeloa, told the court that he was the psychiatrist who examined the accused. His findings were that the accused suffered from what is called arrested mental development or retardation as a result of trauma (birth injury). Although in his evidence in chief the Doctor said he would not regard the accused

8/ as insane

as insane person, he told the court, under cross-examination, that insanity and mental retardation were synonymous and the latter was another form of insanity. He would say at the time he committed the offence the accused was mentally retarded but nevertheless able to appreciate what he was doing.

With due respect to the learned doctor, I am unable to follow the logic of his evidence. Assuming the correctness of his evidence, under cross-examination, that insanity and mental retardation are synonymous and the latter is another form of insanity it seems to me a non sequitur for the Doctor to say, in evidence in chief, he would not regard the accused as insane person.

One thing the Doctor was positive of was that since birth the accused had been suffering from arrested or incomplete development of mind. In terms of the provisions of S.2 of the Mental Health Law 1964, that is a mental incapacity or abnormality. From the Doctor's evidence that insanity and mental retardation or incomplete development of mind are synonymous and the latter is a form of insanity it necessarily follows that the accused who has been suffering from mental retardation or incomplete development of mind (a form of insanity) from birth was, at the commission of the offence, insane or mentally incapacitated.

I would find the accused guilty as charged but insane in accordance with the provisions of subsection (3) of S.172 of the Criminal Procedure and Evidence Act, 1981.

9/ It is ordered

It is ordered that the accused shall be kept in custody at the Central Prison in Maseru pending the signification of Her Majesty's pleasure.

Both assessors agree.

B.K. MOLAI

JUDGE

15th October, 1990.

For Crown : Mr. Thetsane

For Defence : Mr. Nathane.